150 U.S. 420

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RECORD, CASE NO. 14308.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM NO., 276.

JESSE SPALDING, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

OTTO YOUNG AND JULIUS SCHNERING, COPARTNERS AS OTTO YOUNG & CO.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 17, 1890.

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a' United States circuit court, northern district of Illinois.

OTTO YOUNG AND JULIUS SCHNERING, COPARTNERS doing business under the firm name of Otto Young & Co.,
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR THE port and district of Chicago.
} Assumpsit.

Wm. G. Ewing, United States attorney for plaintiff in error.
Shuman and Defrees, attorneys for defendants in error.

1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the United States court rooms in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, judge of the district court of the United States, for the northern district of Illinois, on Friday, the fourteenth day of June, in the adjourned May term of said court, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence the one hundred and thirteenth year.

WM. H. BRADLEY, *Clerk.*

OTTO YOUNG AND JULIUS SCHNERING, COPARTNERS doing business under the firm name of Otto Young & Co.,
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR THE port and district of Chicago.
} Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it rembembered that on the twenty-fifth of July, 1885, came the plaintiffs by their attorneys, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, their præcipe for a summons, and also at the same time filed their bond for costs in said entitled cause, which
2 said præcipe and bond are in the words and figures following, to wit:

Præcipe.

United States circuit court, northern district of Illinois.

OTTO YOUNG AND JULIUS SCHNERING, copartners doing business under the firm name of Otto Young & Co., plaintiffs,
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR the port and district of Chicago, defendant.

The clerk of said court will issue a summons in the above-entitled cause in a plea of trespass on the case on promises to the damage of the

plaintiff in the sum of one hundred and fifty dollars and direct the same to the marshal to execute and make it returnable to the October term of said court, A. D. 1885.

SHUMAN & DEFREES,
Plaintiffs' Attorneys.

CHICAGO, *July 25th*, 1885.

(Endorsed:) Filed this 25th day of July, A. D. 1885. Wm. H. Bradley, clerk.

3 *Bond for costs.*

UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

Circuit court, October term, A. D. 1885.

OTTO YOUNG AND JULIUS SCHNERING, co-partners, doing business as Otto Young & Co.,
vs.
JESSE SPALDING, COLLECTOR, &C. } In law.

We enter ourselves security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by them we hereby agree and stipulate that execution may issue against our property for any costs taxed against them. Dated this twenty-fifth day of July, A. D. 1885.

SHUMAN & DEFREES.

(Endorsed:) Filed July 25, A. D. 1885. Wm. H. Bradley, clerk.

4 On the same day, to wit, on the twenty-fifth day of July, 1885, there issued out of said clerk's office, a writ of summons in said entitled cause, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Summons.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you to summon Jesse Spalding, collector of customs for the port and district of Chicago, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof to be holden at Chicago, in the district aforesaid, on the first Monday of October next, to answer unto Otto Young and Julius Schnering, copartners, doing business under the firm name of Otto Young & Co., of a plea of trespass on the case upon promises to their damage, as they allege, of one hundred and fifty dollars, and have you then and there this writ.

Witness, the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago, aforesaid, this
5 25th day of July, in the year of our Lord one thousand eight hundred and eighty-five and of our Independence the 110th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Marshal's return.

I have served the within writ by reading the same to and within the presence and hearing of Jesse Spalding, therein named, on the 25th day of July, 1885.

F. H. MARSH,
U. S. Marshal,
By E. S. DAVIS,
Deputy.

(Endorsed:) Filed July 31, A. D. 1885. Wm. H. Bradley, clerk.

Afterward, to wit, on the thirtieth day of July, 1885, came the defendant by his attorney and filed in said clerk's office his appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

Appearance.

United States circuit court, northern district of Illinois.

OTTO YOUNG, ET AL.,
vs.
JESSE SPALDING, COLLECTOR, &C. } No. 19731. Assumpsit.

6 The appearance of Jesse Spalding, coll'r, defandant in this cause, is hereby entered by his attorney.

R. S. TUTHILL,
United States Attorney.

(Endorsed:) Filed July 30th, 1885. W. H. Bradley, clerk.

Afterward, to wit, on the twenty-sixth day of August, 1885, came the plaintiffs, by their attorneys, and filed in said clerk's office their declaration in said entitled cause, which said declaration is in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA.
Northern District of Illinois, ss:

In the United States circuit court for the northern district of Illinois to the October term, 1885.

Otto Young and Julius Schnering, copartners, doing business under the firm name and style of Otto Young & Co., plaintiffs in this suit (which is a suit arising under the revenue laws of the United States, and is brought to recover duties claimed by the plaintiffs to have been illegally exacted of them and by them paid under protest), by Shuman & Defrees, their attorneys, complain of Jesse Spalding, collector of customs for the
7 port and district of Chicago, defendant herein, who was summoned, etc., of a plea of trespass on the case on promises. For that whereas the said plaintiffs heretofore, to wit, on the first day of June, in the year of Lord one thousand eight hundred and eighty-five at, to wit,

plaintiff in the sum of one hundred and fifty dollars and direct the same to the marshal to execute and make it returnable to the October term of said court, A. D. 1885.

SHUMAN & DEFREES,
Plaintiffs' Attorneys.

CHICAGO, *July 25th*, 1885.

(Endorsed:) Filed this 25th day of July, A. D. 1885. Wm. H. Bradley, clerk.

3 *Bond for costs.*

UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

Circuit court, October term, A. D. 1885.

OTTO YOUNG AND JULIUS SCHNERING, co-partners, doing business as Otto Young & Co.,
vs.
JESSE SPALDING, COLLECTOR, &C. } In law.

We enter ourselves security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by them we hereby agree and stipulate that execution may issue against our property for any costs taxed against them. Dated this twenty-fifth day of July, A. D. 1885.

SHUMAN & DEFREES.

(Endorsed:) Filed July 25, A. D. 1885. Wm. H. Bradley, clerk.

4 On the same day, to wit, on the twenty-fifth day of July, 1885, there issued out of said clerk's office, a writ of summons in said entitled cause, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Summons.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you to summon Jesse Spalding, collector of customs for the port and district of Chicago, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof to be holden at Chicago, in the district aforesaid, on the first Monday of October next, to answer unto Otto Young and Julius Schnering, copartners, doing business under the firm name of Otto Young & Co., of a plea of trespass on the case upon promises to their damage, as they allege, of one hundred and fifty dollars, and have you then and there this writ.

Witness, the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago, aforesaid, this
5 25th day of July, in the year of our Lord one thousand eight hundred and eighty-five and of our Independence the 110th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Marshal's return.

I have served the within writ by reading the same to and within the presence and hearing of Jesse Spalding, therein named, on the 25th day of July, 1885.

F. H. MARSH,
U. S. Marshal,
By E. S. DAVIS,
Deputy.

(Endorsed:) Filed July 31, A. D. 1885. Wm. H. Bradley, clerk.

Afterward, to wit, on the thirtieth day of July, 1885, came the defendant by his attorney and filed in said clerk's office his appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

Appearance.

United States circuit court, northern district of Illinois.

OTTO YOUNG, ET AL.,
vs.
JESSE SPALDING, COLLECTOR, &C. } No. 19731. Assumpsit.

6 The appearance of Jesse Spalding, coll'r, defandant in this cause, is hereby entered by his attorney.

R. S. TUTHILL,
United States Attorney.

(Endorsed:) Filed July 30th, 1885. W. H. Bradley, clerk.

Afterward, to wit, on the twenty-sixth day of August, 1885, came the plaintiffs, by their attorneys, and filed in said clerk's office their declaration in said entitled cause, which said declaration is in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA.
Northern District of Illinois, ss:

In the United States circuit court for the northern district of Illinois to the October term, 1885.

Otto Young and Julius Schnering, copartners, doing business under the firm name and style of Otto Young & Co., plaintiffs in this suit (which is a suit arising under the revenue laws of the United States, and is brought to recover duties claimed by the plaintiffs to have been illegally exacted of them and by them paid under protest), by Shuman & Defrees, their attorneys, complain of Jesse Spalding, collector of customs for the
7 port and district of Chicago, defendant herein, who was summoned, etc., of a plea of trespass on the case on promises. For that whereas the said plaintiffs heretofore, to wit, on the first day of June, in the year of Lord one thousand eight hundred and eighty-five at, to wit,

the northern district of Illinois, made payment to the said defendant, collector, as aforesaid, of a certain large sum of money, to wit, the sum of eighteen dollars and ninety cents, lawful money of the United States, as duties under protest, and in order to obtain possession of certain merchandise imported into the United States for them, the said plaintiffs, entered for consumption at the custom-house at the port of Chicago, in the district aforesaid, under the charge and control of the said defendant as such collector; and the said plaintiffs aver that said sum of money above specified, so paid to the said defendant as aforesaid, as duties as aforesaid, was in excess of the amount of duties authorized by the laws of the United States to be levied, collected, and paid upon the merchandise aforesaid, and was by the said defendant collector illegally demanded and exacted of and from the said plaintiffs.

And the said plaintiffs aver that within ten days after the ascertainment and liquidation of the duties upon the merchandise aforesaid by the proper officers of the customs, they, the said plaintiffs, being dissatisfied
8 with the decision of the said collector, gave notice in writing to the said defendant, as collector, setting forth therein distinctly and specifically the ground of their, the said plaintiffs', objection thereto, and that within thirty days after the date of the said ascertainment and liquidation as aforesaid the plaintiffs appealed to the Secretary of the Treasury of the United States.

And the said plaintiffs aver that the decision of the said Secretary of the Treasury has been had on said appeal, and that this suit has been brought within ninety days after the decision of the said Secretary of the Treasury on such appeal.

By means whereof and by force of the statute of the United States in such case made and provided, the said defendant became liable to pay to the said plaintiffs the sum of eighteen dollars and ninety cents, lawful money, as aforesaid, so illegally demanded of and under protest paid by the said plaintiffs as aforesaid, and being so liable, the said defendant afterwards, to wit, on the day and year and at the district aforesaid, in consideration thereof, undertook and then and there faithfully promised the said plaintiffs well and truly to pay to the said plaintiffs the said sum of money when he, the said defendant, should be thereunto afterwards requested.

And whereas also the said defendant afterwards, to wit, on the
9 same day and year and at the place last aforesaid, became and was indebted to the said plaintiffs in the further sum of eighteen and $\frac{90}{100}$ dollars, like lawful money as aforesaid, for money by the said defendant, before that time, had and received to and for the use of the said plaintiffs, and being so indebted, the said defendant afterwards, to wit, on the day and year and at the district last aforesaid, in consideration thereof, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned whenever the said defendant should be thereunto afterwards requested.

Nevertheless, the said defendant (although often requested, etc.) has not paid the said several sums of money above specified, or any or either of them, or any part thereof, to the said plaintiffs; but to pay the same or any part thereof to the said plaintiffs the said defendant hath hitherto

wholly neglected and refused, and still does so neglect and refuse, to the damage of the said plaintiffs, in the sum of one hundred and fifty dollars, and therefore the said plaintiffs bring their suit, &c.

SHUMAN & DEFREES,
Plaintiffs' Attorneys.

(Endorsed): Filed Aug. 26, 1885. W. H. Bradley, clk.

10 Afterward, to wit, on the ninth day of October, 1885, came the defendant, by his attorney, and filed in said clerk's office his plea in said entitled cause, which said plea is in the words and figures following, to wit:

Plea.

In the circuit court of the United States of America for the northern district of Illinois.

JESSE SPALDING, COLLECTOR, &c.,
vs.
OTTO YOUNG ET AL. } No. 19731. Assumpsit.

And the said Jesse Spalding, defendant, by R. S. Tuthill (United States attorney for this district), his attorney, comes and defends, etc., when, etc., and says that he did not undertake or promise, in manner and form, as the said plaintiff has above thereof complained against him; and of this the said defendant puts himself upon the country, etc.

R. S. TUTHILL,
U. S. Attorney for Defendant.

(Endorsed): Filed Oct. 9, 1885. Wm. H. Bradley, clerk.

11 Afterward, to wit, on the twenty-eighth day of January, 1889, in the December term of said court, 1888, in the record of the proceedings thereof in said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

OTTO YOUNG ET AL.
vs.
JESSE SPALDING. } Assumpsit.

Now come the parties, by their attorneys, and now comes on to be heard the motion of the defendant to suppress the depositions of Baille Lemaire. filed herein, and after hearing the arguments of the counsel the court overrules said motion.

Afterward, to wit, on the third day of April, in the adjourned March term of said court, 1889, in the record of the proceedings thereof in said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

OTTO YOUNG ET AL.
vs.
JESSE SPALDING, COLLECTOR, &C. } Assumpsit.

Now come the parties, by their attorneys, and upon issue joined herein, therupon comes a jury of good and lawful men, to wit, E. M.

12 Donohue, John A. Rolfe, Julius Jonas, S. A. Albertson, Julius Ludwig, Samuel Davidson, Thomas Hurlstone, I. P. Nudd, George McKenney, S. J. Block, Matt Kilborg, and W. M. Brown, who were all duly elected, tried, and sworn, well and truly to try said issue, and after hearing the evidence and receiving the instructions of the court the jury returned the following verdict, to wit: We, the jury, find the issue for the plaintiffs, and assess their damages at four dollars and sixty cents.

13 Afterward to wit: On the fourteenth day of June (in the adjourned May term of said court), 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Judgment.

OTTO YOUNG AND JULIUS SCHNERING
vs.
JESSE SPALDING, COLLECTOR, &C. } Assumpsit.

On motion of the plaintiffs' attorney for judgment herein, it is thereupon considered and adjudged by the court that said plaintiffs do have and recover of said defendant the said sum of four dollars and sixty cents, their damages, with interest thereon from the time of payment, together with their costs in this behalf, amounting to one hundred and forty-five dollars and sixty-six cents.

And the court finds that there was probable cause for the acts done herein by said defendant, and orders that execution do not issue herein.

14 On the hearing of said cause the following exceptions were taken and were allowed by the court and made of record, which said exceptions are in the words and figures following, to wit:

Bill of exceptions.

On the hearing of said cause the following exceptions were taken and were allowed by the court and made of record, which said exceptions are in the words and figures following, to wit:

In the circuit court of the United States in and for the northern district of Illinois, northern division.

OTTO YOUNG ET AL.
vs.
JESSE SPAULDING, LATE COLLECTOR of customs, etc. } Gen. No. 19731. Assumpsit.

Defendant's bill of exceptions.

Be it remembered that upon the trial of this cause the plaintiffs, to maintain the issues upon their side, introduced in evidence the following deposition:

Interrogatories addressed to M. BAILLE LEMAIRE:

Int. 1. What is your name, age, residence, place of business, and occupation?

Ans. My name is Jean Baptiste Baille Lemaire; I am 48 years of age and upwards; I reside at No. 22 & 26 Rue Oberkampf, Paris,

France; I am a manufacturer of opera glasses, doing business
15 under the firm name of Baille Lemaire, at No. 22 & 26 Rue Oberkampf, Paris, France.

Int. second. Do you know the value of the different component materials of certain opera glasses manufactured by Lemarie, of Paris, France, and shipped by J. Glaenzer & Co. to L. Manasse, Chicago, Illinois, during the years 1885, 1886, and 1887?

Ans. I do.

Int. third. Please state, if you know, the value of each of the component materials, metal, shell, and glass in the opera glasses contained in invoices dated September 1st, October 5 and 31st, 1885; February 5, March 13, June 5 and 24, July 15, August 25, September 15 and 30, October 5, 1886; February 3, April 20, May 31, and June 25, 1887, shipped to L. Manasse, Chicago, Illinois, by J. Glaenzer & Co., Paris, France, attaching hereto a tabular statement of such values, making the same a part of your deposition.

Ans. I attach hereto as a part of my deposition, and endorsed as Exhibit "E," a tabular statement showing the values of each of the component materials, metal, shell, and glass in the opera glasses sold by me to Glaenzer & Co., Paris, between the dates of 1st September, 1885, and 9th June, 1888, and shipped by J. Glaenzer & Co. to L. Manasse, Chicago, Illinois.

Int. fourth. Please look at the statements of relative cost of the Lemaire opera glasses attached to the depositions of Koch, Versepuy, and Glaenzer, taken in the case of Otto Young & Co. vs. Jesse Spaulding, collector, &c., Gen. No. 19731, in the circuit court of the United States for the northern district of Illinois, and state whether or not the same indicate the correct values.

Ans. Looking at the statement and relative cost of the opera glasses referred to in this interrogatory I can not say whether or not the
16 values given in the statements of Koch are correct, for the reason that the numbers given in the statements of Koch have been transformed and changed in such manner that they do not correspond with the numbers of my own tariff of prices. As to the statements of Versepuy, the values are very nearly correct; there are only certain differences of centimes. The statements of Glaenzer indicate the correct values.

Int. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this case, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. I know of nothing further that may be of interest to the parties at issue in this case or either of them.

Cross Int. In what condition is the metal when you buy it; is it in sheets, in bars, or is it ready to go into the opera glass? Give the price.

Ans. The metal when I buy it is in the form of cast ingots, or in sheets; the price varies according to the state of the market.

Cross int. In what condition are the shell and glasses when you buy them? Give the prices.

Ans. The sheel is in its natural and original form; it is the mother of pearl shell in the rough. The price varies according to the condition of the market. The glasses are in the rough state in which they leave the cast. The prices have not varied for a long time; they are for the ordinary glass 25 francs per square meter for flint glass, 3½ francs per kilogram, and for crown glass 7 francs per *gi*logram.

17 Ans. Is your tabular statement produced in answer to the second direct interrogatory predicated upon the respective values of various materials therein set out after they have been manufactured and nothing remains to be done to them but to fasten the various pieces of shell, metal, and glass together to make the opera glass, or is it based on the original and prime cost of the said metal, shell, and glass before they have been manufactured for opera glasses?

Ans. The prices which I have given in my tabular statement produced in answer to the second direct interrogatory are based on the average value of the raw materials during a period covering the last ten years or more, and also upon the costs of manufacture necessary to transform these raw materials into opera glasses. I cannot change my own tariff of prices at every fluctuation of the market.

Cross-int. Please give a tabulated statement of the market values of the metal, shell and glass respectively, used in the opera glasses in their raw and unmanufactured state and before the opera glasses manufacturer expends any money or labor on them. Let it be similar in all details to that called for by direct interrogatory two.

Ans. I state that for the last 5 years the price of copper has varied from one hundred & 1007 to 220 francs per 100 kilograms, shell from 8 to 2 francs per kilogram. In estimating the price of shell the costs of transportation and maritime insurance are to be considered. As to the prices of glass I have given the same in my answer to second cross-interrogatory.

Cross-int. Please give the names and addresses of several dealers from whom you purchase the metal, shell, and glass used in these opera glasses, and please file as a part of your respective depositions several original invoices of purchases of such metal, shell, and glass.

18 Ans. The names and addresses of some of the dealers from whom I purchase the metal, shell, and glass used in these opera glasses are as follows, viz: For metal, Société Générale dés Meteaux, Rue Elzeoir, Paris, and Mr. Chanvel, at Evreux, Dept. de l'Eure, France; for shell, Mr. Oetse, Rue Grenita, Paris; Mr. Simonson, London; Mr. Harris, Amsterdam; for glass, Société Générale de St. Gobain, Dept. de l'Aisne, France, and Mr. Rossetti, at Montreuil, near Paris, France. I can not file as part of my deposition any original invoices, for the reason that I need them in my business.

BAILLE LEMAIRE.

Deposition of ALBERT KOCH:

Int. State your name, age, residence, place of business, and occupation.

Ans. My name is Albert Koch, my age is 61 years and upwards, my residence is Paris, my place of business is 6 Rue Martel, Paris, and my occupation is that of commission merchant, doing business under the firm name of Koch Frères.

Int. Are you acquainted with the values of the different materials, metal, shell, and glass, composing certain opera glasses shipped by you or by Koch Frères, from Paris, to Otto, Young & Co., & Co., Chicago, under invoices dated Feb'uary 11, 1885, and September 15, 1886; if so, please set out in tabular form the values of such component materials in connection with the designating numbers of the different glasses as invoiced, and in case such glasses are of the Lemaire manufacture also give the manufacturer's designating numbers of such glasses.

Ans. I am acquainted with the values of the materials only so far as invoiced to me by the manufacturer. I attach hereto as part of my deposition a duplicate tabular form of invoices, dated Feb'y 11th, '85, and Sept. 15, 1886, and herewith endorse the same as Exhibit A, giving therein such information as lies within my power.

Int. If you have shipped opera glasses to Otto Young & Co. or other importers in Chicago, Illinois, since September 15th, 1886, please attach to your deposition copies of such, showing the value of the component materials of such glasses and to whom shipped.

Ans. I have not shipped to any one in Chicago since that date.

Int. Do you know or can you set forth any other matter or things which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. I know of nothing further of interest to the parties at issue in this case.

Cross-int. In what condition is the metal when you buy it? Is it in sheets, in bars, or is it ready to go into the opera glass? Give the price.

Ans. I do not buy the metal. I only deal in the glasses completely manufactured.

Cross-int. In what condition are the sheel and glasses when you buy them? Give the prices.

Ans. My answer to preceding cross-interrogatory covers this question; I do not know their individual values.

Cross-int. Is your tabular statement, produced in answer to the second direct interrogatory, predicated upon the respective values of various materials therein set out after they have been manufactured, and nothing remains to be done to them but to fasten the various pieces of shell, metal, and glass together to make the opera glass, or is it based on the original and prime cost of the said metal, shell, and glass before they have been manufactured for opera glasses?

Ans. It is based upon the value of the glasses completely manufactured as invoiced to me by the manufacturer.

Int. Please give a tabulated statement of the market values of the metal, shell, and glass respectively used in the opera glasses in their raw and unmanufactured state and before the opera-glass manufacturer expends any money or labor on them. Let it be similar in all details to that called for by direct interrogatory two.

Ans. It is impossible for me to do so, as I am only conversant with the values of completely manufactured glasses.

Cross-int. Please give the names and addresses of several dealers from whom you purchase the metal, shell, and glass used in these opera glasses, and pleas file as a part of your respective deposition several original invoices of purchases of such metal, shell, and glass.

Ans. I make no purchases whatever from dealers, and am not competent to answer the question.

ALBERT KOCH.

And that thereupon the plaintiffs to further maintain the issues on their side offered in evidence the deposition of FRANK P. GLAENZER and others, as follows:

Int. What is your name, age, residence, place of business, and occupation?

Ans. My name is Frank Glaenzer; my age is 34 years and upwards; I reside in Paris; my business is at 35 Boul'd Strausb'urg, Paris, and my occupation is that of exporter.

21 Int. Do you know the values of the different materials, metal, shell, and glass composing certain opera glasses shipped by you or by Glaenzer & Co., Paris, to L. Manasse, Chicago, Illinois, under invoices dated as follows: Sept. 1, 1885; October 3 and 31, 1885; Feb'uary 5, March 13, June 5 and 24, July 15, August 25, September 15 and 30, and October 5, 1886; Feb'uary 3, April 20, May 31, and June 25, 1887.

Ans. I do.

Int. If you answer the second interrogatory in the affirmative, please attach to and make part of your deposition a detailed statement of the different glasses so shipped, showing the designating numbers and the values of the component materials of such glasses.

Ans. I attach herewith a tabular statement, as requested, and endorse the same as Exhibit "B" with the commissioner.

Int. Have you or J. Glaenzer & Co. shipped opera glasses of Colmont's or LeMaire's manufacture to L. Manasse since the date of those mentioned in interrogatory second, or to Otto Young & Co., Benjamin Allen & Co., Charles D. Peacock, Shourds, Storey and Kasper, U. Huffman, S. Hyaman & Co., of Chicago, Illinois, since September, 1886?

Ans. I have made some shipments of Colmont's and Lemaire's glasses since that date to L. Manasse, but to no one else.

Int. If you answer the fourth interrogatory in the affirmative, please state to whom, giving dates of the several invoices, and attach to and make a part of your deposition a tabulated statement in each instance, showing the designating numbers and the values of the component materials of such glasses.

Ans. My tabular statement in answer to interrogatory 3rd includes values of component materials of Lemaire's goods of all invoices of glasses shipped to L. Manasse up to date, but I herewith attach a tabulated form of Colemont's glasses shipped during that period, which I herewith endorse as Exhibit "C" in conjunction with the commissioner.

22 Cross-int. In what condition is the metal when you buy it; is it in sheets, in bars, or is it ready to go into the opera glass. Give the price.

Ans. I only handle opera g'asses after they are completely manufactured, and nothing remains to be done; I can not give the prices of the materials in their unmanufactured condition.

Cross-int. In what condition are the shell and glasses when you buy them? Give the prices.

Ans. My answer to the 1st cross-interrogatory covers this question.

Cross-int. Is your tabular statement produced in answer to the second direct interrogatory predicated upon the respective values of various materials therein set out after they had been manufactured, and nothing remains to be done to them but to fasten the various pieces of shell, metal, and glass together to make the opera glass, or is it based on the original and prime cost of the said metal, shell, and glass before they have been manufactured for opera glasses?

Ans. My tabular statement is predicated upon the values of the different materials after they have been completely manufactured into glasses, and nothing remains to be done whatever.

Cross-int. Please give a tabulated statement of the market values of the metal, shell, and glass, respectively, used in the opera glasses in their raw and unmanufactured state, and before the opera-glass manufacturer expends any money or labor on them. Let it be similar in all details to that called for by direct interrogatory two.

Ans. It is impossible for me to answer this question, as I do not deal in the raw unmanufactured materials.

Cross-int. Please give the names and addresses of several dealers from whom you purchase the metal, shell, and glass used in these opera
23 glasses, and please file as part of your respective depositions several original invoices of purchases of such metal, shell, and glass.

Ans. As I have no dealings with dealers I am not in a position to furnish the desired information.

FRANCK GLAENZER.

Testimony of V. VERSEPUY:

Int. What is your name, age, residence, place of business, and occupation?

Ans. My name is V. Versepuy; my age is 57 years and upwards; I reside in Paris, and am doing business at 32 Fauboury Poissomere; my occupation is that of exporter.

Int. Are you acquainted with the value of the different materials, metal, glass, and shell, composing certain opera glasses shipped by you to L. Manasse, Chicago, Illinois, under invoice dated June 25th, 1887, and if so, please give the values of each of such component materials in connection with the designated numbers on the invoice.

Ans. I am acquainted with the values of the different materials in question, in so far as I can rely on the statement of the manufacturers. I give on the annexed table, and by me marked, exhibit "D," a list of values of the invoice June 25th, 1887, to L. Manasse, of Chicago, including the manufacturer's profit, but not my own commission for making the sale.

Int. Are you acquainted with the values of the component materials of Colmont's shell opera glasses shipped by you to various importers at

Chicago, Illinois, during the past three years, and if so, please attach to and make part of your deposition a tabular statement of such glasses and the values of the component materials of such glasses, giving the names of the importers to whom you shipped and the dates of the invoices?

24 Ans. My answer to the 2d interrogatory covers this, in so far as the values are concerned. Mr. Manasse is the only importer in Chicago to whom I ship.

Int. If you have shipped like goods to other importers at Chicago, Illinois, please attach to your deposition copies of such invoices, showing the values of the component materials of such glasses.

Ans. I have shipped to no other importer at Chicago.

Cross Int. In what condition is the metal when you buy it; is it in sheets, in bars, or is it ready to go into the opera glass? Give the price.

Ans. The materials are in the manufactured state of a completely manufactured opera glass and the manufacturer's prices can be found in Exhibit D.

Cross Int. In what condition are the shell and glasses when you buy them? Give the prices.

Ans. My answer to previous interrogatory covers this question.

Cross Int. Is your tabular statement, produced in answer to the second direct interrogatory predicated upon the respective values of various materials therein, set out after they have been manufactured and nothing remains to be done to them but to fasten the various pieces of shell, metal, and glass together to make the opera glass, or is it based on the original and prime cost of the said metal, shell, and glass before they have been manufactured for opera glasses?

Ans. The various values are given on the completely manufactured opera glass.

Ans. Please give a tabulated statement of the market values of the metal, shell, and glass, respectively, used in the opera glasses, in their raw and unmanufactured state and before the opera glass manufacturer expends any money or labor on them. Let it be similar in all details

25 to that called for by direct interrogatory two.

Ans. I can not do so, as I am acquainted with the values of the materials only after they are manufactured into opera glasses.

Cross Int. Please give the names and addresses of several dealers from whom you purchase the metal, shell, and glass used in these opera glasses, and please file as a part of your respective depositions several original invoices of purchases of such metal, shell, and glass?

Ans. As I buy the glasses direct from the manufacturer in their completed form, I can not give the names of any dealers.

V. VERSEPUY.

EXHIBIT A, produced & identified by Albert Koch and endorsed by him and by the commissioner on the day of his examination. Albert Koch. J. L. Rathbone, consul-general & commissioner.

26 [Duplicata.]

PARIS, *le* 11 *février* 1885.

Messieurs Otto Young & Cie., à Chicago, doit à Koch Frères, 6, rue Martel, pour les marchandises suivantes, expédiées par petite virtesse à G. frais, risques et périls par l'entremise de Monsieur H. Teské au, Havre 8, p. str., consigned to R. F. Downing & Cie., à New York and bonded to Chicago.

[O. Y. & Co.]								
		No. 552, 1 caisse.						
		Order 135.						
	4	Dz. lenses pluxo cylnd. e.		510			20.40	Net.
	2	" " " "		510			10.20	"
		Order 139.						
	3	Dz. pebbles periscopig convexes		22			44	"
		Order 143.						
	12	Field glasses,	21',	1522,	13.00		156	15.2 %
	12	Engravings,			.75		9	"
	5	Grosses floriscopes,	2025,		120.00		600	15 %
	12	Field glasses,	26"	1540,	43.00		516	"
	2	Telescopes,	25	1604,	35.50		71	"
		Order 144.						
	12	Telescopes,	16	1600,	9.50		114	"
	12	"	19	"	12.50		150	"
	24	"	14	"	6.50		156	"
	6	"	16	1602,	10.00		60	"
	6	"	19	"	13.00		78	"
	6	"	12	1604,	5.75		34.50	"
	6	"	14	"	7.25		43.50	"
	1	Gro. linen provers,			1935,		60	102 %
	6	Compasses,			1861,	9	54	15 %
	1	Gro. linen provers, nickel pl.,			1937,	11.00	132	30 %
		À reporter					2.308.00	
	½	Dz. readers, 51 mm.,		1900,	75		37.50	35 %
	2	" Pebbles periscop. convexes,			22		44	Net.
	6	" Bi-convexes,			19		114	"
	1½	" Periscop. concaves			22		33	"
	10	" Lenses " convexes, blue,			40		33.35	"
	3	" Eyeglasses,			16.50		49.50	"
	1	Compn.	38 mm.	1875			5.25	15 %
	1	"	38 "	1876			8	.....
	1	"	60	1870			8.25	.....
	2	Gro. remples					.....	.....
	1	Eyeglass.		255			.....	.....
	1	"		256			.....	.....
	1	Telescope,	10"	1615			13.50	15 %
	1	Opera glass,	15"	1560			31	20 %
	1	" "	15"	1215			34.50	15.2 %
	1	Engraving,		1707			.75	"
	1	Barometre,					9.25	Net.
	1	Field glass,	24"	1121			26.50	15.2 %
	1	" "	24"	1122			31.50	"
		À reporter					.....	.....
27	2	Engravings,			.75		1.50	15.2 %
	1	Opera glass,	15",	1103			30	"
	1	Engraving,					.75	"
	1	Reader,	27"	1915			4	"
	1	"	36	"			5.50	"
	1	"	30	1916			4.50	"
	1	Opera glass,	15"	1141			13.35	15 %
	1	" "	15"	1142			16.10	"
	1	" "	15	1143			13.10	"
	1	" "	15	1144			11.75	.....
	4	Engravings,			.60		2.40	Net.
	1	Opera glass,	15"	1550			29	20 %
	1	" "	13	1551			27	"
	1	" "	15	1552			29	"
		À reporetr					2,976.40	

Samples no value.

EXHIBIT A—Continued.

Order 144—Continued.

1	Opera glass, 15″	1094		15	20.2 %
1	" " 15″	1095		13.25	"
1	" " 21	1096		20	"
1	" " 15	1097		10.50	
1	" " 19	1098		23	"
1	" " 17	1099		15	
6	Engravings,		.60	3.60	Net.
½	Doz. eyeglasses, mod. Lepin,		265, 26	2.20	10 %
½	" " " "		266, 24	2	"
½	" " " "		267, 18	1.50	"
½	" " " "		268, 16	1.35	"
2	Solar crickets, 13″,	1988	dz. 4	.70	30 %
1	Linen prover,	1932	4.80	.40	"
1	Magnifiers, 30 mm.,	1965	16.80	1.40	"
1	" "	1966	25.20	2.10	"
1	" "	1967	33.60	2.80	"
1	Field glass, 24			18.50	30&5%
1	" " 26			20.50	"
	Net sum, 363.70			3,130.20	
	Escompte 10 %	7.05	.70		
	10.2%	60	7.10		
	15 %	1,966.30	294.95		
	15.2%	304.50	50.80		
	20 %	116	23.20		
	20.2%	96.75	20.90		
	30 %	139.40	41.80		
	30 & 5%	39	13.05		
	35 %	37.50	13.10	465.60	
				2,664.60	
	Commission, 5 %			133.25	
	Caiss & en collage			14.15	
	Francs			2,812	

28 [Duplicata.]

PARIS, *le* 15 *septembre* 1887.

Messieurs Otto Young & Cie., San Francisco, doit à Koch Frères, 6, rue Martel, pour les marchandises suivantes, expédiées par petite vitesse à G. frais, risques et périls, par l'entremise de H. Teske au Havre 8, par str., consigned to N. G. W. Sheldon & Cie., New York, and bonded to Chicago.

[O. Y. & C.] *No. 1132, 1 caisse.*

3,600	Glass slides, ground edges,	1986,	4.25	153	Net.
13	Gr. white lenses, 1c ck.,	896,	30	390	"
54	" blue " 2 "	897,	24	126	"
16	Doz. spectacles, 2 "	041,	75	100	"
10	" " 2 "	0415,	78	65	"
12	" "		62c	23	"
3	Gro. pair's remples,	041,	16	48	"
1	Barometer,	1715		20	"
1	"	1716		23.75	"
1	"	1717		26.50	"
5	Gro. floroscopes,	2030,	dz., 9	540	8%
6	Opera glasses, 17″,	1535,	20	120	15%
1	Microscope,	2016		45	18%
1	"	2017		58	"
2	Telescope', 19″,	1610,	23.50	53	"
2	Opera glasses, 13″,	1260,	38.50	77	20%
2	" " 15″,	1260,	44	88	"
1	" " 13″,	1549		45	"
1	" " 15″,	"		49	"
1	" " 17″,	"		54	"
	À reporter			2,104.25	
8	Opera glasses, cases, 13,	1175,	1.50	12	24½%
8	" " " 15,	"	1.75	14	"
8	" " " 17,	"	1.75	14	"
1	" " " 13″,		11.87	62.75	"
1	" " " 15,		"	68.50	"
1	" " " 17,		"	77.25	"

Commissions, 3%.

EXHIBIT A—Continued.

		No. 1132, 1 caisse—Continued.			
	2	Gro. eyeglass corks, 2544, 48	96	25%	
	3	" " " " 2540, 22	66	"	
	36	Opera glasses, 15", 1050, 7.75	279	30. 5	
	48	" " 15", " 7.75	372	"	
	36	" " 17", " 8.25	297	"	
	6	" " cases, 19", " 1.75	10. 50	"	
	1	Doz. dividers on cards, 1	11. 50	35	
	1	" " " " 2	13	"	
29]	1	Drawing boxes, 0	1. 10	35%	
	1	3	1. 50	"	
	1	12	2.	"	
	1	18	2. 50	"	
	1	24	3.	"	
	1	44	3. 50	"	
	1	45	5. 25	"	
	1	52 bis	5. 75	"	
	1	90	6. 50	"	
	1	171	7.	"	
	1	179	8. 45	"	
	1	52 ter	10.	"	
	1	180	14. 50	"	
	1	Proportional dividers, 431	4. 10	"	
	1	" " 510	5. 10	"	
		À reporter	3, 578.		
	¼	Dz. drawing pens, 458, 4.	1.	35%	
	¼	" " " 459, 5. 50	1. 40	"	
	¼	" " " 460, 8. 50	2. 15	"	
	1	Tarif			
[O. Y. & Co.]		*No. 1133, 1 caisse.*			
	42	Dz. pebles paux convexes, 20. 50	861.	Net.	
	33	" " biconvexes, 17. 50	577. 50	"	
	2	Lenses, 950, 7. 00	14.	10%	
	2	" 5. 50	11.	"	
	4	" 3. 50	14.	"	
	2	951 7	14.	"	
	2	951 5. 50	11.	"	
	4	" 3. 50	14.	"	
	2	Barometers, 1725, 23	46.	10. 2%	
	2	" 1726, 16	32.	" "	
	2	" 1730, 28	56.	" "	
	2	" 1735, 37. 50	75.	" "	
	1	" 1731	37.	" "	
	1	" 1732	47.	" "	
	2	Microscopes, 2012, 25	50.	15%	
	2	" 2013, 27. 50	55.	"	
	3	Opera glasses, 13, 1195, 65. 50	196. 50	24½	
	3	" " 15, " 74. 75	224. 25	"	
	3	" " 13, 1189, 22. 25	66. 75	"	
Commissions, 3%.	3	" " 15, 1189, 24. 25	72. 75	"	
	3	" " 17, " 28. 75	86. 25	"	
	12	" " 13, 1178, 33.	396.	"	
	12	" " 15, 1178, 36. 25	435.	"	
	12	" " 13, 1186, 32. 50	390.	"	
	12	" " 15, " 35. 75	429.	"	
30]	24	Opera glasses, 11", 1175, 24. 75	594.	24½%	
	16	" " 15", " 29. 25	468.	"	
	4	" " 13", " 26. 50	106.	"	
	4	" " 17", " 34. 50	138.	"	
		" " à reporter	9, 099. 55		
	24	" " 11", 1180, 24. 75	594.	24½%	
	24	" " 13", " 26. 50	636.	"	
	24	" " 15", " 29. 25	702.	"	
Commissions, 3%	36	" " 13", 1150, 13. 25	477.	"	
	24	" " 15", " 14. 25	513.	"	
	24	" " 17", " 16.	384.	"	
	12	" " 19", " 18.	216.	"	
	4	" " 13", 1175, 29. 65	118. 60	"	
	4	" " 13", 29. 95	119. 80	"	
	4	" " 15", 32. 75	131.	"	
	4	" " 15", 32. 45	129. 80	"	
	4	" " 17", 38.	152.	"	
	4	" " 17", 38. 30	153. 20	"	
	24	Dz. three-leg microscopes, 14" 1926, 12.	288.	30%	
	1	Readers, 24" 1900	19.	37%	
	1	27"	24.	"	
	1	30"	30.	"	
	1	33"	33.	"	
	1	36"	39.	"	

EXHIBIT A—Continued.

No. 1133, 1 caisse—Continued.

1	Readers, 39″ 1900		45.	37%
1	42″ .57		51.	"
½	45″		28.50	"
½	48″ .63		31.50	"
½	51″ .75		37.50	"
½	54″ .87		21.75	"
1	Bag, 1422, dz. .56		4.65	Net.
1	Oper' glass, 15″ 1136		10.25	15%
1	15″ 1137		25.25	"
1	15″ 1138		24.75	"
1	15″ 1139		12.25	"
4	Gravure, .60		2.40	Net.
Samples. 1	Microscope, 2018		15.50	18%
1	Teauf Lacombe		.....	20%
1	Dz. eye-glass cords, 2527, .60		5.	25%
	À reporter		14,174.25	
1	Coddington magnifers, 6m 2, 1954, 60.00		5.	30%
	" " 7″ " 70.00		5.85	"
			14,185.10	
31]	Net sum	2,420.80		
	Escompte 8 % 540	43.20		
	10 % 78	7.80		
	10.2% 293	34.55		
	15 % 297.50	44.60		
	18 % 171.50	30.85		
	20 % 313	62.60		
	24½ % 8,077.40	1,978.95		
	25 % 167	41.75		
	30 % 298.85	89.65		
	30.5% 958.50	321.05		
	35 % 109.30	38.25		
	37 % 360.25	133.30		
			2,826.55	
			11,358.55	
	Commission, 3% sum 6,098.45	182.95		
	" 5% 5,260.10	263		
	2 caisses embollage	41.50		
			487.45	
	Francs		11,846	

32 EXHIBIT "B" produced and identified by Frank Glaenzer, and endorsed by him, and by the commissioner, on the day of his examination. J. L. Rathbone, consul-general and commissioner. Frank Glaenzer.

[J. Glaenzer & Co., 55 Boulevard de Strosburg, Paris.]

[Lemaire.]

	Shell.	Metal.	Glasses.	Cases.	Total.
No. 155, 11 lines	11.	10.25	2. "	1.50	24.75
" 13 "	11.25	10.50	2.25	1.50	26.50
" 15 "	13.25	11.50	2.75	1.75	29.25
" 17 "	16. "	13.25	3.50	1.75	34.50
156, 11 "	15.50	10.25	2.	1.50	29.25
" 13 "	16.75	10.50	2.25	1.50	31.00
" 15 "	17.75	11.50	2.75	1.75	33.75
" 17 "	20.50	13.25	3.50	1.75	39. "
181, 11 "	11.	12.50	2.	2.	27.50
" 13 "	12.25	12.75	2.25	2.	29.25
" 15 "	13.25	14.	2.75	2.25	32.25
" 17 "	16.	16.	3.50	2.50	38.
185, 11 "	11.	10.25	2.	1.50	24.75
" 13 "	12.25	10.50	2.25	1.50	26.50
" 15 "	13.25	11.50	2.75	1.75	29.25
" 17 "	16.50	13.25	3.50	1.75	35.
186, 11 "	15.50	10.25	2.	1.50	29.25
" 13 "	16.75	10.50	2.25	1.50	31.
" 15 "	17.75	11.50	2.75	1.75	33.75
" 17 "	21.	13.25	3.50	1.75	39.50
219, 11 "	11.	14.50	2.	2.	29.50
" 13 "	12.25	14.75	2.25	2.	31.25
" 15 "	13.25	16.25	2.75	2.25	34.50

EXHIBIT "B"—Continued.

	Shell.	Metal.	Glasses.	Cases.	Total.
No. 219, 17 lines	16.50	17.75	3.50	2.50	40.25
182, 11 "	15.50	12.75	2.	2.	32.25
" 13 "	16.75	12.75	2.25	2.	33.75
" 15 "	17.75	14.	2.75	2.25	36.75
" 17 "	21.	15.50	3.50	2.50	42.50
239, 11 "	14.	12.50	2.	2.	30.50
" 13 "	15.25	12.75	2.25	2.	32.25
" 15 "	16.	14.	2.75	2.25	35.
" 17 "	18.25	16.	3.50	2.50	40.25
244, 11 "	16.25	12.50	2.	2.	32.75
" 13 "	17.50	12.75	2.25	2.	34.50
" 15 "	18.25	14.	2.75	2.25	37.25
" 17 "	20.50	16.	3.50	2.50	42.50
231, 11 "	13.50	12.50	2.	2.	30.
" 13 "	14.50	12.75	2.25	2.	31.50
" 15 "	16.50	14.	2.75	2.25	34.50
" 17 "	18.25	16.	3.50	2.50	40.25
33] 188, 11 "	9.	8.25	2.	1.50	20.75
" 13 "	10.25	8.25	2.25	1.50	22.25
" 15 "	11.25	8.50	2.75	1.75	24.25
" 17 "	14.	9.50	3.50	1.75	28.75
705, 11 "	29.50	12.75	3.	2.	47.25
" 13 "	31.50	12.75	3.25	2.	49.50
" 15 "	35.	14.	4.	2.25	55.25
" 17 "	40.25	15.50	5.	2.50	63.25
701, 11 "	46.75	9.25	3.	2.	61.
" 13 "	50.50	9.75	3.25	2.	65.50
" 15 "	58.75	9.75	4.	2.25	74.75
700, 17 "	66.	11.50	5.	2.50	85.
646, 11 "	8.25	12.50	8.	2.	25.75
" 13 "	9.	12.75	3.25	2.	27.
" 15 "	9.75	14.	4.	2.25	30.
" 17 "	11.	16.	5.	2.50	34.50
162, 11 "	11.	16.25	2.	2.	31.25
" 13 "	12.25	16.50	2.25	2.	33.
" 15 "	13.25	18.	2.75	2.25	36.25
" 17 "	16.	20.	3.50	2.50	42.
1139/1123 7 "	10.75	12.50	4.	1.50	28.75
244, 13 "	17.50	12.75	2.25	2.	34.50
" 15 "	18.25	14.	2.25	2.25	37.25
711, 13 "	28.50	12.75	3.25	2.	46.50
161, 13 "	16.75	12.75	2.25	2.	33.75
" 15 "	17.75	14.	2.75	2.25	36.75
" 17 "	20.50	15.50	3.50	2.50	42.
1398, 17 "		16.25	3.50	4.50	24.25
" 19 "		17.75	4.25	4.50	26.50
" 24 "		20.75	7.50	5.	33.25
" 36 "		22.75	8.50	5.	36.25
34, 13 "		9.	2.25	1.50	12.75
" 15 "		9.25	2.75	1.75	13.75
" 17 "		10.25	3.50	1.75	15.50
" 19 "		11.25	4.25	2.	17.50
" 21 "		12.50	5.25	2.25	20.

The above is a detailed statement showing the value of different materials composing opera glasses shipped by J. Glaenzer & Co., Paris, to L. Manasse, Chicago, Illinois, under invoices dated as follows: September 1, 1885; October 5th and 31st, 1885; February 5, March 13, June 5 and 24th, July 15, August 25, September 15 and 30th, and October 5, 1886; February 3rd, April 20th, May 21, and June, 1887. Also August 27 and 30th, September 15th and 20th, December 5th, 1887, and June 27, 1888.

FRANCK GLAENZER.

250——2

34 EXHIBIT C produced & identified by Frank Glaenzer and endorsed by him & by the commissioner on the day of his examination. J. L. Rathbone, consul general & commissioner. Frank Glaenzer.

[Messrs. T. Glaenzer & Co., Paris.]

[Mr. Colmont.]

Nos.	Metal.	Leather.	Shell.	Engraving.	Glasses.	Cases.	Total.
570	5.15	.50			1.25	.60	7.50
584	5.15		6		1.25	.60	13
2158, 11 lines	22.75			15	2	1.25	41.
" 13 "	24.75			15	2	1.25	43.
" 15 "	25.50			15.75	2.25	1.50	45.
" 17 "	27.50			17	2.75	1.75	49.
2097 bis, 11 "	7.			16.50	1.50	1	26.
" 13 "	7.75			17.75	1.50	1	28.
" 15 "	8.20			17.75	1.85	1.20	29.
" 17 "	9.55			19	2.05	1.40	32.
2096 10 "	6.75		9.75		1.50	2	20
368 11 "	6.50		15.75		2	1.25	25.50
" 13 "	7.50		16.25		2	1.25	27.
" 15 "	7.95		17.30		2.25	1.50	29.
" 17 "	9.80		18.70		2.75	1.75	33.
2011 11 "	9	2			1.50	1	13.50
" 13 "	9.75	2.25			1.50	1	14.50
" 15 "	10.20	2.25			1.85	1.20	15.50
" 17 "	11.05	2.50			2.05	1.40	17.

The above is a detailed statement showing the value of different materials, composing opera glasses shipped by I. Glaenzer & Co., to L. Manasse, Chicago, Illinois, under invoices dated as follows: 25 October, '87, June 9th, 1888.

FRANK GLAENZER.

35 EXHIBIT D produced & identified by V. Versepuy, & endorsed by him & by the commissioner on the day of his examination. J. L. Rathbone, consul-general & commissioner. V. Versepuy.

[Extract from Mr. V. Versepuy's invoice to Mr. L. Manasse, Chicago, dated June 25, 1887.]

	Colmont's make; his quality, 82 ass'd colors.	Price.	
V. V's No. 611, 12	12 opera glasses, shell	12.80	153.60 Net.
" 14	36 " " "	13.75	495.00 "
" 15	22 " " "	15.20	334.40 "
612, 14	6 " " "	13.75	82.50 "
15	12 " " "	15.20	182.40 "
610, 15	6 " " "	15.20	91.20 "

EXHIBIT D—Continued.

[Invoice dated April 30, '88.]

	Lemaires' make.	Price.		
Lemaire's No. 181, 11	2 opera glasses, shell	26.00	52.00	Subject.
" 13	2 " " "	27.75	55.50	"
" 15	2 " " "	30.50	51.00	"
" 17	2 " " "	35.60	71.00	"
182 11	2 " " "	30.75	61.50	"
" 13	2 " " "	32.25	64.50	"
15	2 " " "	35.00	70.00	"
17	2 " " "	40.75	81.50	"

36 Value of oculars and obj. glasses.	Value of metal portion.	Value of shell portion.	Total.
1.10	3.40	8.30	12.80
1.10	3.90	8.75	13.75
1.50	4.30	9.40	15.20
1.50	3.90	8.75	13.75
1.50	4.30	9.40	15.20
1.50	4.30	9.40	15.20
2.00	12.50	11.50	26.00
2.25	12.75	12.75	27.75
2.75	14.00	13.75	30.50
3.50	16.00	16.00	35.50
2.00	12.50	16.25	30.75
2.25	12.75	17.25	32.25
2.75	14.00	18.25	35.00
3.50	16.00	21.25	40.75

37 EXHIBIT E, produced and identified by Baille Lemarie and endorsed by him and by the commissioner on the day of his examination. Baille Lemarie. J. L. Rathburne, consul-general and commissioner. Endorsed and filed Dec. 4, 1888. Wm. H. Bradley, clerk.

[Figures in brackets erased in original.]

Dates de mes factures à M. Glazier.	Nos. du tarif.	Désignations.	5 Lig.	7.	11.	13.	15.	17.	19.	21.	24.	26.
1. 7bre 1885	34	Cuivre										
		Verres										
		Etuis										
	155	Cuivre			10. 25	10. 50	11. 50	13. 25				
		Nacre			11.	12. 25	13. 25	16.				
		Verres			2.	2. 25	2. 75	3. 50				
		Etuis			1. 50	1. 50	1. 75	1. 75				
	185	Cuivre										
		Nacre										
		Verres										
		Etuis										
	182	Cuivre					14. 00	16.				
		Nacre					17. 75	20. 50				
		Verres					2. 75	3. 50				
		Etuis					2. 25	2. 50				
	" 12 verres	Cuivre					14.					
		Nacre					17. 75					
		Verres					10. 75					
		Etuis					2. 25					
	219	Cuivre										
		Nacre										
		Verres										
		Etuis										
	703	Cuivre				20. 25	21. 25					
		Nacre				24.	27. 75					
		Verres				3. 25	"					
		Etuis				2.	2. 25					
	239	Cuivre				13. 25	14. 25					
		Nacre				14. 75	15. 75					
		Verres				2. 25	2. 75					
		Etuis				2.	2. 25					
	231	Cuivre					14.					
		Nacre					15. 50					
		Verres					2. 75					
	S. & G. Counay	Etuis					2. 25					
	188	Cuivre										
		Nacre										
		Verres										
		Etuis										

1. 8bre 1885	34	Cuivre										
		Verres										
		Etuis										
	155	Cuivre										
		Nacre										
		Verres										
		Etuis										
	185	Cuivre				10.50	11.50					
		Nacre				12.25	13.25					
		Verres				2.25	2.75					
		Etuis				1.50	1.75					
	182	Cuivre										
		Nacre										
		Verres										
		Etuis										
	185 12 verres	Cuivre										
		Nacre										
		Verres										
		Etuis										à suivre.
38 Suite. 1. 8bre 1885	182 12 verres	Cuivre										
	"	Nacre										
	"	Verres										
	"	Etuis										
	219	Cuivre										
	"	Nacre										
	"	Verres										
	"	Etuis										
	219 12 verres	Cuivre					16.25					
	"	Nacre					13.25					
	"	Verres					10.75					
	"	Etuis					2.25					
	185	Cuivre										
	"	Nacre										
	"	Verres										
	"	Etuis										
13. 8bre 1885	34	Cuivre										
		Verres										
		Etuis										
5 fevrier 1886	1398	Cuivre						16.25	17.75		20.75	22.75
		Verres						3.50	4.25		7.50	8.50
		Etuis						4.50	4.50		5.	5.
	" 12 verres	Cuivre										22.75
		Verres										23.50
		Etuis										5.
23 fevrier 1886	1398	Cuivre										
		Verres										
		Etuis										
	" 12 verres	Cuivre										
		Verres										
		Etuis										

EXHIBIT E—Continued.

Dates de mes factures à M. Glazier.	Nos. du tarif.	Désignations.	5 Lig.	7.	11.	13.	15.	17.	19.	21.	24.	26.
21 mai 1886	1398	Cuivre										
		Verres										
		Etuis										
2 juin 1886	1398	Cuivre										
		Verres										
		Etuis										
21 août 1886	1080	Cuivre		10.50								
		Verres		3.								
		Etuis		1.50								
21 " 1886	34	Cuivre				9.	9.25	10.25	11.25	12.50		
		Verres				2.25	2.75	3.50	4.25	1.25		
		Etuis				1.50	1.75	1.75	2.	2.25		
	1200	Cuivre					12.25	14.25				
		Verres					"	5.				
		Etuis					2.25	2.50				
	155	Cuivre										
		Nacre										
		Verres										à suivre.
		Etuis										
39 Suite, 21 Aout, 1886.	185	Cuivre										
		Nacre										
		Verres										
		Etuis										
	182	Cuivre										
		Nacre										
		Verres										
		Etuis				[10.50]	[11.50]	[13.25]				
	156	Cuivre				10.50	11.50	13.25				
		Nacre				16.75	17.75	20.50				
		Verres				2.25	2.75	3.50				
		Etuis				1.50	1.75	1.75				
	219	Cuivre										
		Nacre										
		Verres										
		Etuis										
	162	Cuivre				16.50	18.					
		Nacre				12.25	13.25					
		Verres				2.25	2.75					
		Etuis				2.	2.25					
	239	Cuivre										
		Nacre										
		Verres										
		Etuis										

| | | |

EXHIBIT E—Continued.

Dates de mes factures à M. Glazier.	Nos. du tarif.	Désignations.	5 Lig.	7.	11.	13.	15.	17.	19.	21.	24.	26.
14 Avril, 1887	34	Cuivre										
		Verres										
		Etuis										
	185	Cuivre										
		Nacre										
		Verres										
		Etuis										
13 Mai, 1887	Mauni snipse	Alurr						99.50				
	Scande ciscodite	Verres						6.25				
	Alum coal bl centi	Etuis						7.				
23 Juin, 1887	13.98	Cuivre										
		Verres										
		Etuis										
1 Aout, 1887	18.33	Cuivre					36.25	36.75	39.75			
		Verres					8.	9.75	11.25			
		Etuis					6.25	6.50	6.50			
	17.53	Cuivre					29.[50]					
		Verres					17.					
		Etuis					3.50					
16 Aout, 1887	34	Cuivre										
		Verres										
		Etuis										
	42.4 c fenil	Cuivre				14.50						
		Verres				2.75						
		Etuis				1.75						
	155	Cuivre										
		Nacre										
		Verres										
		Etuis										
											a suivre.	
41 Suite	185	Cuivre										
16 août 1887		Nacre										
		Verres										
		Etuis										
	182	Cuivre										
		Nacre										
		Verres										
		Etuis				[1,650]	[18]					
	162	Cuivre				1,650	18/					
						[1,225]	[1,325]					
		Nacre				1,225	1,325					
		Verres				225	275					
		Etuis				2	225					

	181	Cuivre				1,275	14	16					
		Nacre				1,225	1,325	16					
		Verres				225	275	350					
		Etuis				2	225	250					
	244	Cuivre				1,325	1,425						
		Nacre				17	18						
		Verres				225	275						
		Etuis				2	225						
	239	Cuivre											
		Nacre											
		Verres											
		Etuis					[1,625]						
	219	Cuivre					1,625 / [1,325]						
		Nacre					1,325 / [275]						
		Verres					275						
		Etuis					255						
	701	Cuivre											
		Nacre											
		Verres											
		Etuis											
	1,139	Cuivre		1,325									
		Nacre		11									
		Verres		3									
		Etuis		150									
16 7bre, 1887	34	Cuivre											
		Verres											
		Etuis											
	12 glasses	Cuivre											
		Verres											
		Etuis											
	239	Cuivre											
		Nacre											
		Verres											
		Etuis											
	155	Cuivre											
		Nacre											
		Verres											
		Etuis											
	188 coul. dorés	Cuivre											
		Nacre											
		Verres											
		Etuis											à suivre.
42 Suite 16 7bre, 1887	239 ferré	Cuivre											
		Nacre											
		Verres											
		Etuis											
	181 ferré	Cuivre											
		Nacre											
		Verres											
		Etuis											

EXHIBIT E—Continued.

Dates de mes factures à M. Glazier.	Nos. du tarif.	Désignations.	5 Lig.	7.	11.	13.	15.	17.	19.	21.	24.	26.
Suite 16 7bre, 1887	162	Cuivre										
		Nacre										
		Etuis										
		Verres										
	155	Cuivre										
		Nacre										
		Verres										
		Etuis										
2 eme facture	34	Cuivre										
16 7bre 1887		Verres										
		Etuis										
	4c. doré molt	Cuivre										
		Verres										
		Etuis										
	155	Cuivre										
		Nacre										
		Verres										
		Etuis										
	185	Cuivre										
		Nacre										
		Verres										
		Etuis										
	219	Cuivre										
		Nacre										
		Verres										
		Etuis										
	162	Cuivre										
		Nacre										
		Verres										
		Etuis										
3 eme facture	34	Cuivre										
16 7bre 1887		Verres										
		Etuis										
	42 4c. ferré	Cuivre										
		Verres										
		Etuis										
	155	Cuivre										
		Nacre										
		Verres										
		Etuis										
	187	Cuivre										
		Nacre										
		Verres										
		Etuis										

43	Suite 3me facture	182	Cuivre											
	16 7bre, 1887		Nacre											
			Verres											
			Etuis											
		162	Cuivre											
			Nacre											
			Verres											
			Etuis											
		181	Cuivre											
			Nacre											
			Verres											
			Etuis											
		244	Cuivre											
			Nacre											
			Verres											
			Etuis											
		239	Cuivre											
			Nacre											
			Verres											
			Etuis											
		219 ferré	Cuivre					[975]	[975]					
			Nacre					[5,050]	[1,875]					
			Verres					[325]	[4]					
			Etuis					[2]	[225]					
		701	Cuivre					975	975					
			Nacre					5,050	1,875					
			Verres					325	4					
			Etuis					2	225					
		1139	Cuivre											
			Nacre											
			Verres											
			Etuis											
23 9bre, 1887		1398, 12 glasses	Cuivre											
			Verres											
			Etuis											
9 Jun, 1888		½ P. argent matolum, pôle grad., genre Watteau etor de couleur.	Argent											
			Alum											
			Verres											
			Etuis											

44 *Detailed price list for shell opera glasses.*

[MEMORANDUM.—No. . Japanned, mount. as No. 1457, V. Versepuy, 32 Faubourg Poissonneire, Paris 3d Aug., 1888. Mr. L. Manasse, Chicago.]

	Ocular and objective.	Price of metal part.	Price of shell part.	Total price.
12 l.	1f.	2. 50	4. —	7. 50
14 l.	1. 25	3. 25	4. 75	9. 25
15 l.	1. 50	3. 50	5. 25	10. 25

Subject to usual disc.
Total prices do not include Etuis.

45 *Detailed price list for shell opera glasses.*

[MEMORANDUM.—No. , Nick. and gilt mount, as patt. 1456, V. Versepuy, 32 Faubourg Poissonniere, Paris, 3d Aug. 1888. Mr. L. Manasse, Chicago.]

	Ocular and objective.	Price of metal part.	Price of shell part.	Total price.
12 l.	1f.	2. 50	4—	7. 50
14 l.	1f. 25	3. 25	4. 75	9. 25
15 l.	1. 50	3. 50	5. 25	10. 25

Subject to usual disc.
Total prices do not includ Étuis.

46 [V. Versepuy, 32 Fg. Poissonniere, Paris.]

To Mr. L. MANASSE, *Chicago.*

Your No. 610, 611, 612:

Detailed price list of Colmont's shell opera glasses, second quality.

[Smoked godfish, white Persian, two kinds (smoked & godfish). No. 1447.]

	Oculars & object glasses.	Metal part.	Shell part.	Total price.
11 lines	1. 10	3. 40	8. 30	12. 80
13 "	1. 10	3. 90	8. 75	13. 75
15 "	1. 50	4. 30	9. 40	15. 20
17 "	1. 70	4. 65	11. 30	17. 65

[Shell, two colors, pink & white, violet & white, black & white.]

[As per samples 1444. 1448.]

11 lines	1. 10	3. 40	12. 80	17. 30
13 "	1. 10	3. 90	13. 25	18. 25
15 "	1. 50	4. 30	13. 90	19. 70
17 "	1. 70	4. 65	15. 80	22. 15

[Shell, one colour, plain pink or plain violet or amber.]

[As per samples 1443.]

11 lines	1. 10	3. 40	11. 30	15. 80
13 "	1. 10	3. 90	11. 75	16. 75
15 "	1. 50	4. 30	12. 40	18. 20
17 "	1. 70	4. 65	14. 30	20. 65

Total prices do not include Étuis net.

47 [V. Versepuy, 32 Fg. Poissonniere 32, Paris.]

To Mr. L. MANASSE, *Chicago:*

Detailed price list of Colmont's shell opera glasses, pearl, 1st choice (Duchess quality).

[Smoked godfish, white Persian (two kinds), smoked & godfish.]

	Ocular & object glasses.	Metal part.	Shell part.	Total price.
11 lines	1. 75	5	13. 45	20. 20
13 "	1. 75	5. 50	14. 45	21. 70
15 "	2. 25	6	15. 30	23. 55
17 "	2. 50	6. 50	18. 40	27. 40

[Shell, two colours, pink & white, violet & white, black & white.]

11 lines	1. 75	5	16. 95	23. 70
13 "	1. 75	5. 50	17. 95	25. 20
15 "	2. 25	6	18. 80	27. 05
17 "	2. 50	6. 50	21. 90	30. 90

[Shell, one colour, plain pink or plain violet.]

11 "	1. 75	5	14. 95	21. 70
13 "	1. 75	5. 50	15. 95	23. 20
15 "	2. 25	6	16. 80	25. 05
17 "	2. 50	6. 50	19. 90	28. 90

Quality No. 350 of Colmont's catalogue. Subject to usual disc.
Total prices do not include Etuis.

48 [V. Versepuy, 32 Fg. Poissonneire 32, Paris.]

To Mr. L. MANASSE, *Chicago:*

Shell, first quality.

[Smoked godfish, white Persian (two sorts) smoked and godfish.]

	Oculars & object glasses.	Metal part.	Shell part.	Total price.
11 lines	1. 50	4	12. 50	17. 70
13 "	1. 50	4. 50	13. 10	19. 10
15 "	1. 85	5	13. 70	20. 55
17 "	2. 05	5. 50	16. 45	24

[Shell, two colours, pink & white, violet & white, black & white.]

11	1. 50	4	15. 70	21. 20
12	1. 50	4. 50	16. 60	22. 60
15	1. 85	5	17. 20	24. 05
17	2. 05	5. 50	19. 95	27. 50

[Shell, one colour, plain pink or plain violet.]

11	1. 50	4	13. 70	19. 20
13	1. 50	4. 50	14. 60	20. 60
15	1. 85	5	15. 20	22. 05
17	2. 05	5. 50	17. 95	25. 50

Quality No. 50, &c., of Colmont's catalogue, subject to usual disc.
Total prices do not include Etuis.

49 [V. Versepuy, 32 Fg. Poissonneire, 32, Paris.]

To Mr. L. MANASSE, *Chicago:*

Detailed price list of Lemaire's shell opera glasses, oculars.

	Oculars & objectives.	Metal part.	Shell part.	Total price.
No. 155.				
11 lines	2	10.25	11	23.25
13 "	2.25	10.50	12.25	25
15 "	2.75	11.50	13.25	27.50
17 "	3.50	13.25	16	32.75
No. 156.				
11 lines	2	10.25	15.50	27.75
13 "	2.25	10.50	16.75	29.50
15 "	2.75	11.50	17.75	32
17 "	3.50	13.25	20.50	57.25
No. 181.				
11 lines	2	12.50	11	25.50
13 "	2.25	12.75	12.25	27.25
15 "	2.75	14	13.25	30.25
17 "	3.50	16	16	37.50
No. 185.				
11 lines	2	10.25	11	23.25
13 "	2.25	10.50	12.25	25
15 "	2.75	11.50	13.25	27.50
17 "	3.50	13.25	16.50	33.25
No. 186.				
11 lines	2	10.25	15.50	27.75
13 "	2.25	10.50	16.75	29.50
15 "	2.75	11.50	17.75	32
17 "	3.50	13.25	21	37.75
No. 219.				
11 lines	2	14.50	11	27.50
13 "	2.25	14.75	12.25	29.25
15 "	2.75	16.25	13.25	32.25
17 "	3.50	18.25	16	37.75
No. 235.				
11 lines	2	10.25	13.75	26
13 "	2.25	10.50	15	27.75
15 "	2.75	11.50	16.25	30.50
17 "	3.50	13.25	18.75	35.50
No. 162.				
11 lines	2	16.25	11	29.25
13 "	2.25	16.50	12.25	31
15 "	2.75	18	13.25	34
17 "	3.50	20	16	39.50
No. 181 F.				
11 lines	2	16.25	11	31.25
13 "	2.25	16.50	12.25	31
15 "	2.75	18	13.25	34
17 "	3.50	20	16.75	40.25
No. 239.				
11 lines	2	12.75	12.75	28.50
13 "	2.25	13	15	30.25
15 "	2.75	14	16.25	32.75
17 "	3.50	15	18.75	37.75

Subject to usual disc.
Total prices do not include étuis.

51 [J. Glaenzer & Co., 8 Aout, 88, 35 Bould de Strasbourg, Paris.]

Detailed prices of parts composing Lemaire's opera glasses.

[Mr. Baille Lemaire is the actual successor & owner of the late Lemaire's factory.]

No.'s		Lines.	Shell.	Metal.	Glasses.	Cases.	Total.
155		11 l	11	10.25	2	1.50	34.75
"		15 "	12.25	10.50	2.25	1.50	36.50
"		15 "	14.25	11.50	2.75	1.75	29.25
"		17 "	16	13.25	3.50	1.75	34.50
156		11 "	15.50	10.25	2	1.50	29.25
"		13 "	16.75	10.50	2.25	1.50	31
"		15 "	17.75	11.50	2.75	1.75	33.75
"		17 "	20.50	13.25	3.50	1.75	39
45%	181	11 "	11	12.50	2	2	27.50
	"	13 "	12.25	12.75	2.25	2	29.25
	"	15 "	13.25	14	2.75	2.25	32.25
	"	17 "	16	16	3.50	2.50	38
185		11 "	11	10.25	2	1.50	24.75
"		13 "	12.25	10.50	2.25	1.50	26.50
"		15 "	13.25	11.50	2.75	1.75	29.25
"		17 "	16.50	13.25	3.50	1.75	35
186		11 "	15.50	10.25	2	1.50	29.25
"		13 "	16.75	10.50	2.25	1.50	31
"		15 "	17.75	11.50	2.75	1.75	33.75
"		17 "	21	13.25	3.50	1.75	39.50
45%	219	11 "	11	14.50	2	2	29.50
	"	13 "	12.25	14.75	2.25	2	31.25
	"	15 "	13.25	16.25	2.75	2.25	34.50
	"	17 "	16.50	17.75	3.50	2.50	40.25
182		11 "	15.50	12.75	2	2	32.25
"		13 "	16.75	12.75	2.25	2	33.75
"		15 "	17.75	14	2.75	2.25	36.75
"		17 "	21	15.50	3.50	2.50	42.50
239		11 "	14	12.50	2	2	30.50
"		13 "	15.25	12.75	2.25	2	32.25
"		15 "	16	14	2.75	2.25	35
"		17 "	18.25	16	3.50	2.50	40.25
244		11 "	16.25	12.50	2	2	32.75
"		13 "	17.50	12.75	2.25	2	34.50
"		15 "	18.25	14	2.75	2.25	37.25
"		17 "	20.50	16	3.50	2.50	42.50
231		11 "	13.50	12.50	2	2	30
"		13 "	14.50	12.75	2.25	2	31.50
"		15 "	16.50	14	2.75	2.25	34.50
"		17 "	18.25	16	3.50	2.50	40.25
52 188		11 l	9	8.25	2	1.50	20.75
"		13 "	10.25	8.25	2.25	1.50	22.25
"		15 "	11.25	8.50	2.75	1.75	24.25
"		17 "	14	9.50	3.50	1.75	28.75
703		11 "	29.50	12.75	3	2	47.25
"		13 "	31.50	12.75	3.25	2	49.50
"		15 "	35	14	4	2.25	55.25
"		17 "	40.25	15.50	5	2.50	63.25
701		11 "	46.75	9.25	3	2	61
"		13 "	50.50	9.75	3.25	2	65.50
"		15 "	58.75	9.75	4	2.25	74.75
70		17 "	66	11.50	5	2.50	85
45%	646	11 " shell	8.25	12.50	3.00	2	25.75
	"	13 " "	9	12.75	3.25	2	27
	"	15 " "	9.75	14	4	2.25	30
	"	17 " "	11	16	5	2.50	34.50
45%	162	11 "	11	16.25	2	2	31.25
	"	13 "	12.25	16.50	2.25	2	33
	"	15 "	13.25	18	2.75	2.25	36.25
	"	17 "	16	20	3.50	2.50	42
	1139 & 1123	7 "	10.75	12.50	4	1.50	28.75
	244	13 "	17.50	12.75	2.25	2	34.50
	"	15 "	18.25	14	2.75	2.25	37.25
	711	13 "	28.50	12.75	3.25	2	46.50
	161	13 "	16.75	12.75	2.25	2	33.75
	"	15 "	17.75	14	2.75	2.25	36.75
	"	17 "	20.50	15.50	3.50	2.50	42.00

FRANK GLAENZER.

53 [V. Versepuy, 32 Faubourg Poissonneiere, Paris.]

PARIS, *3rd Aug.* 1888.

Mr. L. MANASSE,
Chicago:

DEAR SIR: I beg to confirm my last respects of the 27 ult'o and have none of your esteemed favors to reply to.

I have much pleasure in endorsing herewith detailed price list for shell opera glasses, which I hope will be useful to you and help to gain your suit against the U. S. Government so as to have duty reduced from 45 to 25 %.

All the total prices do *not* include the cases and are all subject to the usual discounts, except qualities 610, 611, 612, which, as you know, are net.

Whilst having these details figured out I thought well to have
54 them equally done for the other styles of Colmont's opera glasses, his 1st as well as duchess quality.

I expect to make a shipment this week, but am sorry that I could not get opera glasses 1032 & 1041, but they are surely promised for early next week, when I will make up a case of same, including No. 1398 Lemaire's marine glasses.

Awaiting the pleasure of your further orders,
I remain, dear sir, yours, very truly,

P. V. VERSEPUY,
A. GLASENSKI.

Kindly let me know per return *certain* whether the pearl opera glasses on order from Lemaire as well as Colmont's must be termed shell on the invoice.

55 To which said depositions, and the admission thereof, in evidence to the jury, and the reading thereof to the jury, the defendant, by his counsel, then and there duly excepted before the same were read to the jury, upon the ground that the said depositions and testimony did not give in detail the values of the metal, shell, and glass, component parts of the pearl opera glasses in question in this suit in the condition in which the opeara glass manufacturer received them, but the court overruled said objection of said defendants and permitted the said depositions to be read to the jury, to which action of the court the defendant by his counsel then and there duly excepted, which was all the evidence offered in the case, and that thereupon after the parties to the said cause had closed their evidence as hereinbefore set out and before the jury had retired to consider of their verdict and after the evidence as hereinbefore set forth had been read to the jury, the court, amongst other things, charged the jury that in determining which of the materials, metal, shell, or glass composing the opera glasses in question, was the component material of chief value, they must find what were their respective values at the time they were in such condition that nothing remained to be done upon them by the opera glass manufacturers, except putting them together, to make the completed glasses, to which said charge, or so much thereof as is herein set out, the defendant by his counsel then and there duly excepted.

And further prayed the court to charge the jury that in arriving at what was the component material of chief value in the said opera glasses they should look, and look only, at the respective values of the metal, shell, and glass in the raw and unmanufactured state in which the opera glass manufacturer received them, and before their respective values had been
56 enhanced by the manufacturer by means of any work or labor or time expended thereon, but the court so refused to charge the jury, to which action of the court in charging the jury as aforesaid, and in refusing to charge the jury as aforesaid, the defendant by his counsel then and there duly excepted.

Whereupon the defendant then and there tendered this his bill of exceptions and prayed that the same may be sealed, signed, and enrolled and made a part of the record, and the same is done accordingly.

H. W. BLODGETT. [SEAL.]
Judge.

(Endorsed:) Filed June 14, 1889. Wm. H. Bradley, clerk.

57 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court, in the cause wherein Otto Young and Julius Schnering, copartners, doing business under the firm name of Otto Young & Co., are plaintiffs, and Jesse Spalding, collector of customs for the port and district of Chicago, is defendant, as the same appears from the records and files of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, northern division, this twenty-eighth day of February, 1890.

[SEAL.] WM. H. BRADLEY,
Clerk.

58 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court between Otto Young and Julius Schnering, copartners doing business under the firm name of Otto Young & Co., and Jesse Spalding, collector of customs for the port and district of Chicago, in an action of assumpsit, a manifest error hath happened, to the great damage of the said Jesse Spalding, collector of customs for the port and district of Chicago, as by his complaint appears, and it being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have th

same at Washington on the second Monday of October, A. D. 1890, in the Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 3rd day of February, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the 114th year.

[SEAL.] WM. H. BRADLEY,
Clerk of the Circuit Court of the United States for the Northern District of Illinois.

(Indorsed:) Supreme Court of the United States. Jesse Spalding, collector of customs for the port and district of Chicago, plaintiff in error, vs. Otto Young and Julius Schnering, copartners, doing business under the firm name of Otto Young & Co., defendants in error. Writ of error. Copy deposited for the defendant in error in the clerk's office, U. S., northern district of Illinois.

59 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To OTTO YOUNG and JULIUS SCHNERING, copartners, as Otto Young and Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, A. D. 1890, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Otto Young and Julius Schnering are plaintiffs and Jesse Spalding, late collector of customs for the port and district of Chicago, is defendant, to show cause, if any there be, why the error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett, judge, this twelfth day of February, in the year of our Lord one thousand eight hundred and ninety.

H. W. BLODGETT,
Judge.

Service accepted.

PERCY L. SHUMAN,
Att'y for Pl'ffs in Error.

(Indorsed:) 19731. Supreme Court of the United States. Otto Young et al. vs. Jesse Spalding, coll'r. Citation to October term, A D. 1890.

(Indorsed on cover:) No. 276. Jesse Spalding, collector of customs for the port and district of Chicago, plaintiff in error, vs. Otto Young and Julius Schnering, copartners, as Otto Young & Co. N. Illinois, C. C. U. S. Filed October 17, 1890. Supreme Court U.S. Received October 17, 1890. Clerk's office.

FILED.
NOV 1 1893
JAMES H. McKENNEY,
CLERK.

150-420

In the Supreme Court of the United States.

OCTOBER TERM, 1893.

ANTHONY F. SEERERGER, collector of the port of Chicago, plaintiff in error. vs. FRANCIS A. HARDY. } No. 93.

JESSE SPALDING, COLLECTOR OF THE port of Chicago, plaintiff in error, vs. OTTO YOUNG ET AL. } No. 276.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR PLAINTIFFS IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1893.

ANTHONY F. SEEBERGER, collector of the port of Chicago, plaintiff in error,
vs.
FRANCIS A. HARDY. } No. 93.

JESSE SPALDING, COLLECTOR OF THE port of Chicago, plaintiff in error,
vs.
OTTO YOUNG ET AL. } No. 276.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR PLAINTIFFS IN ERROR.

These were actions to recover duties paid under protest. The importations were made in 1886 and 1885 respectively, so that the cases are governed by the tariff law of 1883. The actions relate to pearl opera glasses. The facts involved in the two actions are similar except in unimportant details; even the witnesses were partly the same.

STATEMENT OF FACTS.

The articles in question were opera glasses with glass lenses encased in coverings partly of metal and partly of shell.

It was assumed on the trial of these actions, as it had been assumed by the same counsel in previous litigation between the parties (*Young* v. *Spalding*, 24 Fed. Rep., 87), that the goods were dutiable under section 2499 of the Revised Statutes (as amended in 1883) as "articles manufactured from two or more materials." The only question litigated at the trials, therefore, was whether shell or metal was the component material of chief value.

According to the estimates of plaintiffs' witnesses, the shell and metal were in most instances nearly equal in value, but the shell almost always the greater in value of the two. (*Spalding* v. *Young*, pp. 16, 17, 19; *Seeberger* v. *Hardy*, pp. 14–16.)

All the witnesses in both cases, however, valued the materials not "in the raw and unmanufactured state in which the opera-glass manufacturer received them, and before their respective values had been enhanced by the manufacturer by means of any work, or labor, or time expended thereon," but "at the time they were in such condition that nothing remained to be done upon them by the opera-glass manufacturers except putting them together to make the completed glasses."

Lemaire, the French manufacturer, whose deposition was taken upon written interrogatories, gave the values of the raw materials *per* kilogram, evading the question of their value in each opera glass. The other witnesses all

admitted that they did not know the value of the metal or shell in any opera glass in the unmanufactured state in which the manufacturer received them (*Spalding* v. *Young*, pp. 8, 9, 11, 12; *Seeberger* v. *Hardy*, pp. 8–9, 18–19). Their figures were based on the selling price lists of the manufacturer; estimates "based on the value of the glasses completely manufactured as invoiced to me by the manufacturer; * * * as I am only conversant with the values of completely manufactured glasses." (*Spalding* v. *Young*, pp. 9, 11, 12; cf. *Seeberger* v. *Hardy*, pp. 18–19.)

It appeared that the manufacturer bought the metal in the shape of ingots, the shell in the natural form of mother-of-pearl, and the glasses in the rough state in which they leave the cast. (*Spalding* v. *Young*, pp. 7–8; *Seeberger* v. *Hardy*, p. 8.)

Lemaire, the only really expert witness, admitted, in *Spalding* v. *Young*, that he paid no attention in his estimates to fluctuations in the value of the raw materials. Yet these fluctuations were tremendous, the metal varying from 100 to 220 francs per 100 kilograms, the shell from 2 to 8 francs per kilogram (p. 8). In other words, we have nothing but arbitrary valuations made for the purposes of these trials, and there is not a particle of proof that Lemaire or anybody else ever sold separately, at public or private sale, a single metal frame or a single pearl covering. In *Seeberger* v. *Hardy*, Lemaire's testimony is to the same effect, while another witness gives hearsay testimony as to what the French manufacturers told him about the cost to them of the various parts of their glasses.

In neither case did the defendant introduce any testimony. Nothing, therefore, appears in the records as to the value of the materials when purchased (the values per kilogram being useless, since we are not informed how much of either material is used upon each opera glass, or how much is wasted upon each).

ERRORS RELIED UPON.

The defendant's counsel in each case made a request to charge, which was practically equivalent to a request for a direction of a verdict. In each case his request was denied and a charge made which was substantially equivalent to the direction of a verdict for plaintiff.

The proceedings in *Spalding* v. *Young* appear as follows:

> Thereupon, after the parties to the said cause had closed their evidence as hereinbefore set out, and before the jury had retired to consider their of verdict, and after the evidence as hereinbefore set forth had been read to the jury, the court, among other things, charged the jury that in determining which of the materials, metal, shell, or glass, composing the opera glasses in question, was the component material of chief value, they must find what were their respective values at the time they were in such condition that nothing remained to be done upon them by the opera-glass manufacturers except putting them together to make the completed glasses. To which said charge, or so much thereof as is herein set out, the defendant by his counsel then and there duly excepted (p. 32).
>
> And further prayed the court to charge the jury that in arriving at what was the component material

of chief value in the said opera glasses, they should look, and look, only at the respective values of the metal, shell, and glass in the raw and unmanufactured state in which the opera-glass manufacturer received them, and before their respective values had been enhanced by the manufacturer by means of any work, or labor, or time expended thereon. But the court so refused to charge the jury; to which action of the court in charging the jury as aforesaid, and in refusing to charge the jury as aforesaid, defendant by his counsel then and there duly excepted (p. 33).

The exceptions in *Seeberger* v. *Hardy* contained in the second bill of exceptions are substantially the same (p. 23).

TARIFF PROVISIONS.

The relevant provisions of the tariff are as follows:

Section 2499 (as amended in 1883): * * * and on all *articles manufactured from two or more materials* the duty shall be assessed at the highest rates at which the *component material of chief value* may be chargeable. If two or more rates of duty should be applicable to any imported article it shall be classified for duty under the highest of such rates: *Provided*, That non-enumerated articles similar in material and quality and texture, and the use to which they may be applied, to articles on the free list, and in the manufacture of which no dutiable materials are used, shall be free.

Schedule B (paragraph 143, Heyl): Porcelain and Bohemian glass, chemical glassware, painted glassware, stained glass, and all other *manufactures of glass* or of which glass shall be the component material *of chief value*, not specially enumerated or provided for in this act, forty-five per centum ad valorem.

Schedule C (paragraph 216, Heyl): Manufactures, articles, or wares, not especially enumerated or provided for in this act, *composed wholly or in part of* iron, steel, copper, lead, nickel, pewter, tin, zinc, gold, silver, platinum, or any other *metal*, and whether partly or wholly manufactured, forty-five per centum ad valorem.

Schedule N (paragraph 486, Heyl): *Shell*, whole or parts of, manufactured, of every description, not specially enumerated or provided for in this act, twenty-five per centum ad valorem.

I.

If we are correct in our third point, *infra*, the question litigated upon these trials was merely a moot question, not really relevant to the case. If our interpretation of the act of 1883 is correct, the articles were dutiable under schedule C as manufactures in part of metal, and did not come under section 2499 at all.

It having been assumed by both parties at the trials, however, that section 2499 governed these importations, that must be conceded by both as the law of the case for the purposes of this writ of error, whether or not it was the law of the land.

The question therefore arises: Was section 2499 properly construed?

II.

In considering a manufactured article made of two or more materials and dutiable under section 2499, for the purpose of ascertaining which of these materials was the most valuable, are we to take the value of each material

per se as the manufacturer received it, or are we to add the price of the labor thereon bestowed and the manufacturer's profit, or are we to take as here the manufacturer's own arbitrary estimate of its relative value when worked up? It is evident that this must often be an important question. In some articles the raw material is the main cost; in other articles the labor; in all, the value of the raw material is ascertainable. In some the proportionate value of the worked-up material is matter of guesswork.

(A) It is a cardinal rule of statutory interpretation that words are presumptively to be given their ordinary colloquial meaning. There can be no question that in ordinary language the materials out of which an opera glass of this kind is made are glass, metal, and shell; not glass lenses, a metal frame and a shell covering. The latter are the various *parts* of the finished glass, but they would not be named by the owner when asked what material his glass was composed of.

So, when asked of what material a hammer was composed, one would naturally say, "Wood and metal;" not "A handle and a head."

(B) This interpretation is confirmed by a later provision of the same act.

> If in a subsequent clause of the same act provisions are introduced, which show the sense in which the legislature employed doubtful phrases previously used, that sense is to be adopted in construing those phrases. (*Alexander* v. *Mayor of Alexandria*, 5 Cranch, 1, 7.)

Section 9 of this act (act of March 3, 1883, chapter 121) prescribes to the appraisers the method by which they shall appraise imported manufactured articles. The cost of material is clearly distinguished from the cost of manufacture, and intended to be taken at the price which the manufacturer is presumed to have paid for it. The section is as follows:

> If upon the appraisal of imported goods, wares, and merchandise, it shall appear that the true and actual market value and wholesale price thereof, as provided by law, can not be ascertained to the satisfaction of the appraiser, whether because such goods, wares, and merchandise be consigned for sale by the manufacturer abroad to his agent in the United States, or for any other reason, it shall then be lawful to appraise the same by ascertaining *the cost or value of the materials composing such merchandise*, at the time and place of manufacture, *together with the expense of manufacturing*, preparing, and putting up such merchandise for shipment, and in no case shall the value of such goods, wares, and merchandise be appraised at less than the total cost or value thus ascertained.

It is true that in other portions of the act of 1883 the noun is used in its plural form, "materials," in a somewhat different sense, in referring to building materials, watch materials, and materials for hats (448, 494, section 2510). In these connections the plural form has obtained a commercial signification which is recognized in the act; this signification belongs to paragraphs, however, which are merely copied from the Revised Statutes and therefore have not the weight, as indications of the intent

of the legislators of 1883, which is due to the new provision drafted by themselves and above quoted. In general, the word "material" is used in the act of 1883 as defined by us; as in referring to glass (143), sheet, plate, hoop, band, or scroll iron (154), copper (186), grain (311), flax, jute, hemp, etc. (334, 336, 338, 339, 343, 350), wool and the hair of other animals (368), silk (383), paper (388), vegetable fabrics (378, 400), human hair (442), catgut (488). At one place "other materials" is distinguished from "threads of other materials" (365).

In *Junge* v. *Hedden* (146 U. S., 233, 239), this court discussed the question whether dental rubber was "a material and not an article composed of rubber."

(C) This argument is confirmed by comparison of the preceding law (Tariff Act of 1842, section 20; Revised Statutes, section 2499). For forty years before the tariff of 1883 this section had read as follows: "And on all articles manufactured from two or more materials the duty shall be assessed at the highest rates at which any of these component *parts* may be chargeable." In the act of 1883 the provision is changed so as to read: "And on all articles manufactured from two or more materials the duty shall be assessed at the highest rates at which the component *material* of chief value may be chargeable." That this amendment was carefully drawn, and that its language deserves careful attention, has been more than once pointed out by this court. (*Hartranft* v. *Meyer*, 135 U. S., 237, 239; *Liebenroth* v. *Robertson*, 144 U. S., 35, 38.)

It seems clear that this amendment, which was intended not to declare, but to change the previous law, substituted

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It seems clear that this amendment, which was intended not to declare, but to change the previous law, substituted

the word "material" for the word "parts" in order to avoid an ambiguity which might result in such an application of the law as that made by the learned circuit court in the case here appealed from.

(D) The Tariff Act of October 1, 1890, section 5, removed all question for the future in this regard by appending to the language in question the following clause: "And the value of each component material shall be determined by the ascertained value of such material in its condition as found in the article."

The act of 1890 was in no sense a revision or declaration, but a change, almost revolutionary, of the preceding law. It was, by its own title, "An act to reduce the revenue and equalize duties on imports, and for other purposes." It reserved all acts done, rights accruing, etc., prior to its own enactment (sec. 55.) In fact, when adopted after so long an interval of time, such a clause as that just quoted is regarded as presumptively a change, not a declaration, of the preceding law. (*People* v. *Davenport*, 91 N. Y., 574, 592.)

(E) Practical considerations confirm the interpretation maintained by the Government. Such considerations are always regarded by the court in construing tariff laws, as in *Arthur* v. *Butterfield* (125 U. S., 70, 76). It is easy enough for the administrative officers of the Government to price the mother-of-pearl in shells or metal in ingots when purchased by the kilogram. They can without difficulty ascertain how much of each is contained in an opera glass, and how much is necessarily wasted in the

construction. But the frame of an opera glass without the lens or the covering—the shell covering without the lens or the frame—is an article that can hardly be said to have a market value or an ascertainable value at all. The shells of one manufacturer would not fit the frames of another manufacturer. To fix their respective values is a merely arbitrary matter, the estimate of an expert unconfirmed by dealings in the open market. The manufacturer and importer must have regard to the conditions of the market and the goods of other dealers in fixing the values of the completed opera glasses on their invoices. But when it comes to dividing up the opera glass for the purposes of section 2499 so as to ascertain the values of the respective component parts—fragments never separately dealt in—then their imaginations have little check. They may in some cases, as they did in this case, cut loose from the present value of the material altogether.

III.

In case a new trial is to be had in these actions the question will arise, whether pearl opera glasses are dutiable under section 2499 at all. It is important that the question should be decided, not only to avoid further proceedings in this court after the new trial has been had but also on account of other cases pending.

If it were not that learned judges of our lower courts had decided to the contrary, it would have seemed to us as clear as anything can be that section 2499 does not apply to these articles. That section, so far as relevant here, covers "articles manufactured from two or more materials." Schedule C, in the provision above quoted, pro-

vides for "articles not especially enumerated or provided for in this act, composed * * * in part of * * * metal." These articles are, of course, composed in part of something else. They are, therefore, "articles manufactured from two or more materials."

"Manufactured from two or more materials" is the most general description that can be given. "Manufactured partly of metal and partly of some other material," which is substantially the effect of Schedule C, is comparatively specific. By one of the most elementary and familiar rules of statutory construction the latter provision governs.

If it be necessary to cite any authority upon this point, we may quote the words of Mr. Justice Bradley in *Solomon* v. *Arthur* (102 U. S., 208, 212), quoted and approved by this court, speaking through Mr. Justice Brewer, in *Hartranft* v. *Meyer* (135 U. S., 237), as follows:

> It is observable that the description of "manufactures made of mixed materials, in part of cotton, silk," etc., is more general than that of "manufactures of which silk is the component part of chief value." Logically, the two phrases, standing together in the same act or system of laws, would be related as follows: "Goods made of mixed materials, cotton, silk, etc., shall pay a duty of 35 per cent; but if silk is the component part of chief value, they shall pay a duty of 50 per cent."

It will be noticed that schedules B and N do not affect this argument, as Schedule B does not apply to manufactures in part of glass, unless glass is the component material of chief value, while Schedule N does not apply to manufactures in part only of shell.

The goods were held dutiable under the metal clause, as we argue, in *Aloe* v. *Churchill*, 44 Fed. Rep., 50 (Thayer, J., November 5, 1890). A contrary ruling was made in *United States* v. *Manasse*, 56 Fed. Rep., 828 (C. C. A., per Bunn, J., June 22, 1893). In the Manasse case the court says that a like decision had been made by Judge Blodgett in *Young* v. *Spalding* (24 Fed. Rep., 87). This seems to be incorrect. No such question was raised in *Young* v. *Spalding*, where the articles, as appears by the opinion of the court, had been classed by the collector not as manufactures in part of metal, but "as manufactures of glass, shell, and metal, in which the metal was the component of chief value." The question has been discussed in the second circuit in the case of Levy, Dreyfus & Co., where the general appraisers in a long opinion rendered June 20, 1891, reported as Treasury Department Decision 11407, decided that the article should be dutiable as a manufacture in part of metal. This decision was based upon the theory that no part of section 2499 of the Revised Statutes applied to enumerated articles, a theory which has been since overthrown by the case of *Liebenroth* v. *Robertson* (144 U. S., 35). Mr. Justice Lacombe, in an unreported decision, reversed the appraisers upon the supposed authority of the Liebenroth case. Until the Liebenroth case, the lower courts had in general assumed the correctness of the proposition applied by the general appraisers, that section 2499 did not apply to enumerated articles; and for this reason, when that proposition was overthrown by this court, the lower courts in the Levy and Manasse cases seem to have acquiesced without examining any of the other phases of the case presented.

It is respectfully submitted that the Liebenroth case has no application to this case whatever, and that the Levy and Manasse cases were therefore erroneously decided. The peculiarity of the Liebenroth case was that there were three statutory enumerations equally applicable to the articles then before the court, which were photographic albums made of paper and leather, with metal or plated clasps. These albums might have been dutiable under the metal clause above quoted; under Schedule N, as "articles * * * of which leather shall be a component part;" or under Schedule M, as "paper, manufactures of, or of which paper is a component material." Here, therefore, the principle of *Solomon* v. *Arthur* could not be applied. There was not simply one, there were three descriptions, each more specific than that of section 2499, each applicable to the articles in question, but all three in conflict with each other. It was admitted, therefore, that section 2499 must be resorted to for the decision of the case.

The only question before the court was as to which portion of section 2499 should be applied. The lower courts had applied the clause that "if two or more rates of duty should be applicable to any imported article it shall be classified for duty under the highest of such rates." This court ruled that the prior clause relating to "articles manufactured from two or more materials" was the one which was applicable. It seems entirely clear that the parties and court were correct in assuming that section 2499 was the only section applicable in that case, which, therefore, has no relevance to the case at bar.

Precisely similar was the case of *Hohenstein* v. *Hedden* (38 Fed. Rep., 94), where the paper and metal clauses

were equally applicable, so that the court were remitted to section 2499. On this account the Attorney-General confessed error in this court on March 13, 1893, the circuit court having applied the wrong clause of section 2499, following its own previous erroneous decision in the Liebenroth case.

IV.

Plaintiff in each case having the burden of proof, and having produced no testimony bearing on the true construction of section 2499, defendant was entitled to rest without further evidence and ask the direction of a verdict. The instruction which he did ask was equivalent. If in the raw state shell is the more valuable material in these opera glasses, that was for plaintiff to show, and as he did not show it, the contrary is to be presumed.

It is respectfully submitted that the judgments should be reversed.

EDWARD B. WHITNEY,
Assistant Attorney-General.

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JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1893.

ANTHONY F. SEEBERGER, Collector of the Port of Chicago,
Plaintiff in Error,
vs.
FRANCIS A. HARDY.

No. 93.

JESSE SPALDING, Collector of the Port of Chicago,
Plaintiff in Error,
vs.
OTTO YOUNG ET AL.

No. 276.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR DEFENDANTS IN ERROR.

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In the Supreme Court of the United States.

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JESSE SPALDING, Collector of the Port of Chicago, Plaintiff in Error, vs. OTTO YOUNG ET AL.	No. 276.

IN ERROR IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

Statement of Facts.

The question litigated in this case was:

Under which of the three following provisions of the Tariff Act of 1883 were so-called "shell opera-glasses"—viz., opera-glasses consisting of glass lenses in a metal frame, with an outer covering of shell—properly dutiable?

Paragraph 143. Porcelain and Bohemian glass, chemical glassware, painted glassware, stained glass,

and *all other manufactures of glass or of which glass shall be the component material of chief value*, not specially enumerated or provided for in this act, forty-five per centum *ad valorem*.

Paragraph 216. *Manufactures*, articles or wares, not specially enumerated or provided for in this act, *composed wholly or in part of* iron, steel, copper, lead, nickel, pewter, tin, zinc, gold, silver, platinum or any other *metal*, and whether partly or wholly manufactured, forty-five per centum *ad valorem*.

Paragraph 486. *Shells, whole or parts of, manufactured, of every description*, not specially enumerated or provided for in this act, twenty-five per centum *ad valorem*.

In each of these cases above cited there are three exceptions in the record, viz. :

1st. An exception to the admission in evidence of certain depositions offered in behalf of the plaintiffs, on the ground that "the said depositions and testimony "did not give in detail the values of the metal, shell "and glass, component parts of the pearl opera-glasses "in question in this suit in the condition in which the "opera-glass manufacturer received them."

2d. An exception to the refusal of the Court to charge that "in arriving at what was the component "material of chief value in the said opera-glasses they "should look, and look only at the respective values of "the metal, shell and glass in the raw and unmanu-"factured state in which the opera-glass manufacturer "received them, and before their respective values had "been enhanced by the manufacturer by means of any "work or labor or time expended thereon."

3d. An exception to the following charge of the Court, "in determining which of the materials, metal, "shell or glass composing the opera-glasses in question, "was the component material of chief value, they must "find what were their respective values at the time "they were in such condition that nothing remained "to be done upon them by the opera-glass manufac-

" turers except putting them together to make the " completed glass."

In the records before the Court (and we suppose we are justified in assuming that these records contain everything that is to be considered by the Court) *these three rulings are the only ones brought up for review.*

It will be observed that the record discloses no motion on the part of the defendant (now plaintiff in error) to take the case from the jury and direct a verdict, no exception to the action of the Court in sending the case to the jury, and no exception to the verdict as not being warranted by the evidence. The defendant in error now contends that his motion for charging a certain proposition to the jury amounted to a request for a direction, but we think the Court cannot seriously consider this proposition. He also asks to have the judgment reversed on a proposition which, if it be correct, would have necessitated a direction in favor of the defendant in the Court below. But, as the defendant below made no request for the direction of a verdict, we think we may safely assume that no such proposition can be raised for the first time on this appeal. As to the suggestion of the Attorney-General that :

" The defendant's counsel in each case made a request to charge, which was practically equivalent to a request for a direction of a verdict."

we must assume that this Court will confine itself to passing on the rulings made and excepted to on the trial, and contained in the record here.

It was proven on the trials (Spalding vs. Young, pp. 6–32, and Seeberger vs. Hardy, pp. 6–22), and necessarily found by the jury as a fact, and as the basis of their verdict, that in all the goods covered by these appeals shell was the component material of chief value in the opera-glasses.

At this point we must call attention to one or two instances in which (no doubt by mistake or inadver-

tence) the learned Assistant Attorney-General has misstated the facts in his brief.

On page 2 of his brief (last paragraph) counsel for the Government says:

"Lemaire, the French manufacturer, whose deposition was taken upon written interrogatories, gave the values of the raw materials per kilogram, *evading the question of their value in each opera-glass.*"

As a matter of fact, no such question as the Assistant Attorney-General refers to was ever asked of the witness. The question asked of him and his answer appear in the record in Spalding vs. Young, page 8, folio 17, as follows:

"Please give a tabulated statement of the market values of the metal, shell and glass respectively, used in the opera-glasses in their raw and unmanufactured state and before the opera-glasses manufacturer expends any money or labor on them. Let it be similar in all details to that called for by direct interrogatory two.

I state that for the last five years the price of copper has varied from 100 and 1007 to 220 francs per 100 kilograms; shell from eight to two francs per kilogram. In estimating the price of shell the costs of transportation and maritime insurance are to be considered. As to the prices of glass, I have given the same in my answer to second cross-interrogatory.

It is obvious that the question asked was properly answered, and there was no evasion of any kind. If the question asked was not the one which counsel in this Court thinks should have been asked, that is no fault of the witness.

Again, on page 3 of the Government brief (middle), we find the following:

"Lemaire, the only really expert witness, admitted, in Spalding vs. Young, that he paid no attention in his estimates to fluctuations in the value of the raw materials."

The record will be searched in vain for any such

admission as the above. What the witness did say on this subject is as follows (Spalding vs. Young, p. 8, fol. 17):

"The prices which I have given in my tabular statement produced in answer to the second direct interrogatory are based on the average value of the raw materials during a period covering the last ten years or more, and also upon the cost of manufacture necessary to transform these raw materials into opera-glasses. *I cannot change my own tariff of prices at every fluctuation of the market.*"

In other words, the witness testified that in *selling goods* he could not change his "*tariff of prices*" according to fluctuations in the prices of the raw materials, which we submit is quite different from an admission that "he paid no attention, in his estimates (viz., *his expert testimony in this case*), to fluctuations in the value of the raw materials."

POINTS.

The rule laid down by the Court for the guidance of the jury in determining which of the component materials of the opera-glass was the component material of chief value was proper.

Under this point we contend that the Court's ruling was correct.

(a) On principle.

(b) On authority.

(a) The Attorney-General propounds the following inquiry (p. 7):

"Are we to take the value of each material *per se* as the manufacturer received it, or are we to add the price of the labor thereon bestowed and the manufacturer's profit, or are we to take, as here, the manufacturer's own arbitrary estimate of its relative value when worked up?"

And he adds:

"It is evident that this must often be an important question. In some articles the raw material is the main cost; in other articles, the labor; in all, the value of the raw material is ascertainable. In some the proportionate value of the worked-up material is matter of guess-work."

We answer: We are to take the values of the component materials as they appear in the article, and the determination of their relative values is necessarily largely to be founded on the testimony of experts. If the manufacturer of the particular opera-glasses in question here was in any way biased or interested, that was for the Government to show, or to overcome his evidence by that of other experts. But what conceivable justification could there be for ignoring the cost of manipulation of the various materials in determining which of them was the component material of chief value. An illustration will serve to show the absurdity of doing anything of the kind. On a piece of common cotton cloth there is embroidered with silk threads a most difficult, elaborate and artistic design. Upon the Attorney-General's theory, the materials of which this article is composed, are cotton cloth and silk thread, and if the former happens to be worth a little more than the latter the article is to be treated for dutiable purposes as a manufacture of which cotton is the component material of chief value, notwithstanding the value of the labor in putting the silk embroidery on the cotton groundwork may be four times the combined value of the cotton cloth and silk thread.

Again, what does the Attorney-General mean by *raw material?* Glass is not a raw material, but a manufac-

tured article. And if the metal in these glasses was (as is almost certain) brass, that is not a raw material, but a manufactured article. If in determining the classifications of these opera-glasses we are not to take the value of glass lenses, metal frames and pieces of cut shell, but must, as the Attorney-General contends, go back to the "raw materials," how far back must we go? To the polished cylinder glass, or the unpolished cylinder glass, or to the sand and lime or flint of which the glass was made, irrespective of the labor of making it? If we are not to take brass frames, are we to take brass in bars, or brass in pigs, or copper in ingots, or copper ore?

Or, to take another illustration, if we have a worsted bed quilt trimmed with silk, how shall we classify it? Under Hartranft vs. Meyer, 135 U. S., 237, it is dutiable according to its component material of chief value. We must not, says the Attorney-General, take the worsted quilt and the silk trimming and determine their relative values, but must go back to the materials, *i. e.*, according to his view, wool and silk, But how? Are we to go back to worsted yarn and silk yarn, or to wool as cut from the sheep and silk as reeled from the cocoon, or to sheep and silkworms?

On page 7 of his brief, the Attorney-General says:

"In some articles the raw material is the main cost; in other articles the labor; in all the value of the raw material is ascertainable. In some the proportionate value of the worked-up material is matter of guesswork."

We respectfully insist the value of the "raw material" (to adopt the ambiguous term used by the Attorney-General) which has gone into a complex manufactured product composed of several materials, is not so easily ascertainable. The parts may be made by different manufacturers. Each different manufacturer may have a different process, and one may waste a good deal more of the material than the other. The prices of the materials may fluctuate, and be 50 per cent. more this

month than last month, and where a manufacturer keeps a large stock of material constantly on hand, how are we to determine as to the parts of any particular article when the material was purchased and at what price?

As to the value of the worked up material being guess-work, it is not guess-work, but matter of expert knowledge, and upon a trial is to be proved by the testimony of experts, as it was in this case, and the attorney for the Government not only could, but did, cross-examine these witnesses, and had the privilege of calling other experts to contradict them had he desired to do so. There was no more guess-work about the testimony than there would be in a surgeon's testifying which of several wounds had caused a person's death.

Much ingenious subtlety is bestowed by the Attorney-General on the word "materials," and much stress is laid upon Section 9 of the Tariff Act of 1883, as showing it has a statutory meaning as relating to crude substances. But it must be quite clear that the word is not used in Section 9 in the sense which the Attorney-General seeks to give it. Thus, in appraising the value of a linen handkerchief, embroidered with a silk initial according to the mode prescribed by Section 9, it must be quite apparent that an appraiser takes the value of a plain linen handkerchief, and then adds the cost of embroidering, &c. No appraiser would dream of appraising the cost of flax as a raw product and then adding the cost of spinning, weaving, &c., to make the complete unembroidered handkerchief. Nor would an appraiser, valuing a carved wooden box partially covered with plush, go back in his investigations to the lumber-yard or the silk factory. He would take the cost of the box and the cost of the plush and add the cost of combining them to make the fancy box. Yet the crude materials which enter into the article are wood and silk. "When asked of what material a hammer was composed," says the Attorney-General, "one would naturally say wood and metal, not a handle and a head." True, but it

would be clearly implied in the answer, wood *in the form of a handle*, and metal *in the form of a head.*

The change in phraseology in the similitude section of the Act of 1883 has not the significance sought to be given to it by the Attorney General, and no Court has ever so intimated.

The suggestion that the insertion of an explicit provision in Section 5 of the present tariff that "the value of each component material shall be determined by the ascertained value of such material in its condition as found in the article," should be regarded as presumptively a change, and not a declaration of the preceding law, will not be borne out by a study of the history of tariff legislation. The efforts of Congress in each new tariff enactment are directed to closing the door against certain constructions contended for in previous tariffs, sometimes by importers and sometimes by the Government, and which may or may not have been sustained by the Courts. A few references to paragraphs in the present law and cases arising under the Act of 1883 will illustrate this:

Par. 69: Mason vs. Robertson, 139 U. S., 624.
Par. 94: Rossman vs. Hedden, 145 U. S., 561.
Par. 100: Maddock vs. Magone, 41 Fed. Rep., 822.
Par. 139: Wiebusch & Hilger vs. Saltonstall, 45 Fed. Rep., 40.
Par. 163: Stransky vs. Erhardt, 52 Fed. Rep., 808.
Par. 180: Forbes Lith. Co. vs. Worthington, 132 U. S., 655.
Par. 242: Falk vs. Robertson, 137 U. S., 225.
Par. 287: Bogle vs. Magone, 40 Fed. Rep., 226.
Par. 354: Robertson vs. Salomon, 144 U. S., 603.
Par. 392: Cahn vs. Seeberger, 137 U. S., 95.
Par. 394: Luckemeyer vs. Magone, 139 U. S., 613.

Par. 414: Hartranft vs. Meyer, 135 U. S., 237.
Par. 452: Robbins vs. Robertson, 33 Fed. Rep., 709.
Par. 457: *In re* Salomon, 55 Fed. Rep., 285.
Par. 468: Isaacs vs. Jonas, 148 U. S., 648.
Par. 510: *In re* Van Blankensteyn, 56 Fed. Rep., 474.
Par. 524; Baumgarten vs. Magone, 41 Fed. Rep., 770.
Par. 752: Astor vs. Merritt, 111 U. S., 202.

In like manner, we contend that the object of the change in the phraseology of Section 5 was to prevent any one making the unreasonable claim which the Government is making in this case.

We think the practical difficulties suggested by the Attorney-General as attending the mode of determining the component material of chief value prescribed in the Court below are wholly imaginary. Congress evidently considered this method practicable when it expressly required it in Section 5 of the present law, and we do not know of any complaint on the part of Customs officers as to the difficulty of carrying it out. We think we have already shown how much more difficult it would be to pursue the method contended for by the Government.

(b) Not only is the charge of the Court below correct in principle, but it is abundantly sustained by authority,

In November, 1880, the case of Fleitman vs. Arthur was tried in the U. S. Circuit Court, for the Southern District of New York before Judge SHIPMAN. The question involved was as to the proper construction of the following proviso to Section 1 of the Act of February 8th, 1875:

"*Provided*: That this act shall not apply to goods, wares or merchandise which have, as a component material thereof, twenty-five per centum or over in value of cotton, flax, wool or worsted."

The Government contended that in a fabric of silk and cotton, the values of the component materials before weaving should determine the classification, but the importers contended and the Court decided that the cost of weaving should be taken into consideration and distributed between the two materials.

In November, 1883, the suit of Meyer *et al.* vs. Tutton was tried in the U. S. Circuit Court at Philadelphia, involving the same question, and the same ruling was made.

Neither of these trials is judicially reported, but in Appendix A and B of this brief will be found official letters of the Treasury Department reciting the history of the trials as above outlined, and acquiescing in the rule there laid down. Attention is particularly called to the fact that Appendix B recites a circular of the Department issued in 1834, holding that " In determining the values of the respective materials in articles composed of silk and cotton, their state of manufacture as they appear in the different fabrics is to be the criterion."

It thus appears that the rule for determining the component material of chief value in an article, which was laid down by the Circuit Court in the case at bar, had been promulgated by the Treasury Department half a century before the goods in question were imported.

II.

The jury having found that shell was the component material of chief value in the opera-glasses, they were properly dutiable at twenty-five per cent. under paragraph 486 of the Act of 1883.

We confess our surprise at the suggestion of the Attorney-General (Point I. of his brief) that the question litigated on the trial of this action was a " moot " question, and his further suggestion (p. 11 of his brief) that it is important that this Court should decide a question which was never raised on the trial below and is not in the record. To the contention that these opera-glasses, although having shell as their component material of chief value, are dutiable as manufactures composed in part of metal, under paragraph 216, Schedule " C," Act of 1883, we make two answers :

1st. No such question was raised on the trial, or is here for review. It being conceded that all the opera-glasses contained some metal, the question should have been raised, if it was thought desirable to raise it, by a motion to direct a verdict. No such motion was made, and even the request, which it is now contended (on what theory of practice we cannot conceive) was *equivalent to* a motion for direction, was based on an entirely different ground. No exception was taken by the plaintiffs in error to the sending of the case to the jury, and they recognized the propriety of such submission by proffering requests to charge. They asked to have the case submitted to the jury under a certain instruction as to the law, and now the singular spectacle is presented of the counsel who assigns the refusal of such instruction as error, conceding (p. 4 of his brief, top) that if the instruction prayed for had been given it would

have been impossible for the jury to find an intelligent verdict, for the reason that his clients had offered no evidence or elicited any testimony on which a finding as to the fact they deemed material could be predicated. The position of the Attorney-General may, we submit with all deference, be summed up thus:

"We asked the Court below to submit to the jury a proposition concerning which we had furnished them with no evidence whatever. For the refusal of the Court to do this, we ask this Court to reverse the judgment, and, in addition, to volunteer an opinion favorable to us on a point never raised on the trial, so we can go back and correct our mistakes."

But if the question now sought to be raised were properly before the Court, it is fully settled against the contention now made by the Attorney-General. The case of Hartranft vs. Meyer, 135 U. S., 237, settled the principle that an article not *specially* enumerated, composed of two or more materials, is dutiable according to its component material of chief value. Since this Court made that decision, it has not only followed it itself in Liebenroth vs. Robertson, 144 U. S., 35, but it has been followed by the lower Courts in the following cases:

In re Mills & Gibb, 49 Federal Reporter, 726.
In re Quaintance, 49 Federal Reporter, 829.
In re Rosenthal, 56 Federal Reporter, 824.
In re Shattuck, 54 Federal Reporter, 365.

But more important than any of these Circuit Court decisions is that of the U. S. Circuit Court of Appeals for the Seventh Circuit, in the case of the United States vs. Manassee, 56 Federal Reporter, 828. This case involved precisely the same question as to precisely the same merchandise as the case at bar, and the facts proven in the case were the same as the facts proven in this case. The Court affirmed the opinion of Judge BLODGETT, and based its decision on the ruling of this Court in Liebenroth vs. Robertson. The

Circuit Court of Appeals is now (under the Act of March 3d, 1891) the final tribunal in revenue cases. In view of the decision of this Court in American Construction Company vs. Jacksonville, Tampa and Key West Railway Company, 148 U. S., 372, and the cases there cited, it may safely be asserted that this Court would not have granted a *writ of certiorari* to review that decision, had one been applied for, and the injection of this question into this case when it is not raised by the record, we submit, with deference, amounts (though doubtless not so intended) to an attempt to accomplish indirectly what could not have been done directly.

We must confess our inability, after the most careful study of the Attorney-General's brief, to understand the distinction which he seeks to draw between the case at bar and that of Liebenroth vs. Robertson.

He says (pp. 11 and 12 of his brief):

"If it were not that learned Judges of our lower courts had decided to the contrary, it would have seemed to us as clear as anything can be that Section 2499 does not apply to these articles. That section, so far as relevant here, covers 'articles manufactured from two or more materials.' Schedule C, in the provision above quoted, provides for 'articles not especially enumerated or provided for in this act, composed * * * in part of * * * metal.' These articles are, of course, composed in part of something else. They are, therefore, 'articles manufactured from two or more materials.'

"'Manufactured from two or more materials' is the most general description that can be given. 'Manufactured partly of metal and partly of some other material,' which is substantially the effect of Schedule C, is comparatively specific. By one of the most elementary and familiar rules of statutory construction the latter provision governs."

If this argument had been applied to the Liebenroth case it would have been as follows:

"Manufactured from two or more materials is the most general description that can be given;" "Manufactured partly of paper and partly of some other material," which is substantially the effect of "Schedule M;" or, "manufactured partly of leather and partly of some other material," which is substantially the effect of "Schedule N," is comparatively specific. By one of the most elementary and familiar rules of statutory construction the latter provision governs.

But the Supreme Court held that the former provision (2499) governed. The fallacy of the whole argument of the Attorney-General consists in comparing a *general rule of construction for the choice between two or more enumerations* with one of those enumerations, and claiming that the latter should apply, because it is more specific than the former.

The Attorney-General, having alluded to the decision of Judge LACOMBE in the case of Levy, Dreyfus & Co., April 25th, 1893, involving the precise question on the same class of goods now under discussion, and which decision was identical with that in the case of United States vs. Manassee, it is proper to add that the decision of Judge LACOMBE was acquiesced in on the certificate of the Attorney-General that no appeal would be taken. And we may also add that in the decision of the Board of General Appraisers (SS. 11,407), reversed by Judge LACOMBE, in compliance with the ruling of this Court in the Liebenroth case, will be found the following:

"As to the first contention, we find, as matter of fact, that *shell is the component material of chief value in all the samples into which shell enters as a component at all.* The testimony of the manufacturers shows that *the value of the shell*, even in the cheaper quality of opera-glasses, is *greater than the value of the glass and metal combined*, and that as the quality and value of the glasses increase the relative value of the shell is also proportionately greater."

This is the decision of a Board of Customs experts

created by special statute to act in place of juries in deciding questions of fact like that involved in this case.

These citations we think plainly show that the questions, both of law and fact, concerning the dutiable character of the merchandise in question here, have been settled, and that an attempt is now made to unsettle the law, similar to that made at the last term of the court in the celebrated hat-trimming cases.

III.

The judgment should be affirmed.

New York, November 11th, 1893.

PERCY L. SHUMAN,
Attorney for Defendants in Error.

W. WICKHAM SMITH,
Counsel.

APPENDIX A.

TREASURY DEPARTMENT,
WASHINGTON, D. C., November 10, 1883.

COLLECTOR OF CUSTOMS, Philadelphia, Pa. :

SIR—The Department is in receipt of a letter dated the 23d ultimo from J. K. Valentine, U. S. Attorney at Philadelphia, in which he reports the trial of the suit of Meyer & Dickinson vs. Tutton, Collector, brought to recover a portion of duties paid on importations of Turquoise silks made by them at your port, which resulted in a verdict for the plaintiffs. The goods in question were composed of silk and cotton, and, under the Act of March 3d, 1875, were dutiable at 60% *ad valorem*—which was the rate assessed by the Collector—unless they contained over 25% in value of cotton, in which case they were excepted from the operations of said Act and became liable to a duty of 50%, under Schedule H of the Tariff of June 22nd, 1874, as claimed by the plaintiffs.

The suit was, therefore, to recover the difference between 60% assessed and 50%, as claimed by the importers.

It is understood that in determining the relative value of the cotton to that of the silk in the fabrics, the customs officers took the weight and value of the cotton and the weight and value of the silk, as they existed before the process of weaving commenced, which was in accord with the general practice of the customs officers in such cases.

In the trial of the case of Fleitman vs. Arthur, at New York in November, 1880, and which involved a similar question, the plaintiff contended that as the duties were assessed on the basis of the market value of the particular goods under examination, that value must constitute the basis upon which the

25% in value of the cotton is to be computed, that the values of the silk and the cotton components of the finished fabric under examination are to be ascertained in their condition as components of that fabric and not at any prior time. This rule would apportion to the cotton and to the silk threads the cost of weaving, finishing, &c., and the other items which went to make up the market value of the goods according to the quantities of cotton and silk respectively.

In this construction the plaintiffs were supported by the Court, which held it to be the proper rule of action in such cases.

On the trial of the Meyer & Dickinson case the Court adopted the rule laid down in the Fleitman case, as before explained, and the case was tried on that theory. The plaintiffs had taken, under a commission, the testimony of the manufacturers of the goods as to the relative quantity of and value of the silk and cotton in the goods, and the testimony covered and was the same in fifteen cases, of which the suit tried was one. The testimony adduced on the trial sustained the claim of the plaintiffs, and showed that the goods contained over 25% in value of cotton, whether the calculation was based on the theory adopted by the Customs officers when classifying the goods or on the rule laid down in the Fleitman case. While not then adopting the rule in the Fleitman case in all its entirety as a rule of action for customs officers generally, the Department so far acquiesced in it as to consent to pay without trial a number of other then pending claims, and such action was accordingly taken. Considering this action and the fact that the Court at Philadelphia confirmed the correctness of the rule laid down in the Fleitman case at New York, *the Department accepts such rule as a proper mode* by which to determine the relative values of silk and cotton as component materials of the description of fabrics before specified.

This fact is stated because, while the application of this rule does not affect this case, it may affect other

pending cases which ought to be settled without further trial, the question involved being of no importance under the present tariff.

The Department authorizes payment of the judgment in this case and of the other like claims covered by the fifteen suits specified, with accrued interest and costs, care being taken to include only such claims as are covered by due protest, appeal and suit.

Very respectfully,
(Sgnd.) H. F. FRENCH,
Acting Secretary.

(No enclosures.)

APPENDIX B.

TREASURY DEPARTMENT,
JANUARY, 24th, 1885.

COLLECTOR OF CUSTOMS, New York:

SIR—The Department duly received your letter of the 20th instant submitting a report from the Appraiser upon the application of Hartley & Coleman for the readjustment of entries of silk and cotton goods involved in pending suits. The Appraiser reports that the goods covered by the invoices of Meyer & Dickinson, No. 5424 per Weser, June 19, and No. 306 per Main, July 1, 1878, known as Torquoise are identical in character and quality with those involved in the suit of the same parties tried at Philadelphia and found to contain 25% in value of cotton, and so liable only to duty at 50% instead of 60% as assessed. You are therefore authorized to readjust the entries accordingly and to take the necessary steps for the settlement of the claim in that respect.

As regards the general question involved, I enclose for your information copy of a letter from this Department to the Collector of Customs at Philadelphia, dated November 10, 1883, in settlement of the Meyer & Dickinson cases.

That letter adopted the rule laid down in the Fleitman case—that the values of the silk and cotton should be taken relatively to their condition and value in the completed fabric, and not in the condition in which they existed before they went into the loom. *This rule finds support in a circular of this Department of July 8, 1834, which states "that in determining the values of the respective materials in articles composed of silk and cotton their state of manufacture as they appear in the different fabrics is to be the criterion."* The rule was not applied, however, because it was found that upon any theory the goods contained over 25% in value of cotton.

The Appraiser suggests his ability to present a method by which a satisfactory adjustment of these cases can be reached without further litigation.

The Department would be pleased to receive the further report of the Appraiser on that subject with such comments as you deem proper.

Very respectfully,

(Sgnd.) H. McCULLOCH,
Secretary.

(1 enclosure.)